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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
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Application of BellSouth Corporation,	)	
Pursuant to Section 271 of the	)	WC Docket No. 02-150
Telecommunications Act of 1934,	)	
To Provide In-Region, InterLATA Services	)	
In Alabama, Kentucky, Mississippi, North	)	
Carolina, and South Carolina	)	

JOINT DECLARATION

OF JAY M. BRADBURY

AND SHARON E. NORRIS

ON BEHALF OF AT&T CORP.

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JOINT DECLARATION
OF JAY M. BRADBURY
AND SHARON E. NORRIS
ON BEHALF OF AT&T CORP.

1. My name is Jay M. Bradbury. My business address is 1200 Peachtree Street, Atlanta, Georgia. Currently I am employed by AT&T Corp. ("AT&T") as a District Manager in the Law and Government Affairs Organization.

2. I graduated with a Bachelor of Arts degree from The Citadel in 1966. I have taken additional undergraduate and graduate courses at the University of South Carolina and North Carolina State University in Business and Economics. I earned a Masters Certificate in Project Management from the Stevens Institute of Technology in 2000.

3. I have been employed in the telecommunications industry for more than thirty years with AT&T, including 14 years with AT&T's then-subsidiary, Southern Bell. I began my AT&T career in 1970 as a Chief Operator with Southern Bell's Operator Services Department in Raleigh, North Carolina. From 1972 through 1987, I held various positions within Southern Bell's (1972 – 1984) and AT&T's (1984 – 1987) Operator Services Departments, where I was responsible for the planning, engineering, implementation and

administration of personnel, processes and network equipment used to provide local and toll operator services and directory assistance services in North Carolina, South Carolina, Kentucky, Tennessee and Mississippi. In 1987, I transferred to AT&T's External Affairs Department in Atlanta, Georgia, where I was responsible for managing AT&T's needs for access network interfaces with South Central Bell, including the resolution of operational performance, financial and policy issues.

4. From 1989 through November 1992, I was responsible for AT&T's relationships and contract negotiations with independent telephone companies within the South Central Bell States and Florida. From November 1992 through April 1993, I was a Regulatory Affairs Manager in the Law and Government Affairs Division. In that position, I was responsible for the analysis of industry proposals before regulatory bodies in the South Central states to determine their impact on AT&T's ability to meet its customers' needs with services that are competitively priced and profitable. In April 1993, I transferred to the Access Management Organization within AT&T's Network Services Division as a Manager – Access Provisioning and Maintenance, with responsibility for ongoing management of processes and structures in place with Southwestern Bell to assure that its access provisioning and maintenance performance met the needs of AT&T's strategic business units.

5. In August 1995, as a Manager in the Local Infrastructure and Access Management Organization, I became responsible for negotiating and implementing operational agreements with incumbent local exchange carriers needed to support AT&T's entry into the local telecommunications market. I was transferred to the Law and Government Affairs Organization in June 1998, with the same responsibilities. One of my most important objectives in these negotiations has been to ensure that BellSouth provides AT&T with efficient and

nondiscriminatory access to BellSouth's Operations Support Systems ("OSS") throughout BellSouth's nine-state region to support AT&T's market entry. As part of my overall responsibilities, I have personally spent hundreds of hours in direct negotiations and implementation meetings with BellSouth personnel and subject matter experts. My activities have included direct participation in OSS implementation teams, review and analysis of data from the testing and use of BellSouth's interfaces as they are implemented, and continuing consultation with AT&T decisionmakers concerning OSS. In addition, I have testified on behalf of AT&T in a number of State public utility commission proceedings regarding OSS issues, including Section 271 proceedings in all nine States in the BellSouth region. I have also testified on behalf of AT&T in the proceedings before this Commission regarding BellSouth's previous applications to provide in-region interLATA service in South Carolina, Louisiana, and Georgia.[1]

6. My name is Sharon E. Norris. My business address is P.O. Box 658, Loganville, Georgia 30052. I have been employed in the telecommunications industry for over twenty-seven years. I currently serve as a consultant with SEN Consulting. In that capacity, I

[1] *In the Matter of Application of BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In South Carolina*, CC Docket No. 97-208, Memorandum Opinion and Order released December 24, 1997 (*"South Carolina 271 Order"*); *In the Matter of Application of BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Louisiana*, CC Docket No. 97-231, Memorandum Opinion and Order released February 4, 1998 (*"First Louisiana Order"*); *In the Matter of Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana*, CC Docket No. 98-121, Memorandum Opinion and Order released October 13, 1998 (*"Second Louisiana Order"*); *In the Matter of Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., And BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services In Georgia and Louisiana*, CC Docket No. 02-35, Memorandum Opinion and Order released May 15, 2002 (*"Georgia/Louisiana Order"*).

have monitored and analyzed, on an ongoing basis, BellSouth's compliance with its obligations to provide AT&T nondiscriminatory access to BellSouth's OSS. I previously have been employed by both AT&T and Southern Bell. Prior to retiring from AT&T in 1998, I had been an employee there since 1983, a member of its Law and Government Affairs Division since 1991, and AT&T's representative to the Georgia Public Service Commission ("Georgia PSC") since 1995. From 1973 until 1983, I held various positions in Southern Bell's business offices, business marketing organizations, retail stores, and support staff organizations. I received a degree in Distributive Education from DeKalb College in 1972. As AT&T's representative to the Georgia PSC, I advocated AT&T's position on issues relating to opening Georgia's local exchange markets to competition. Beginning in 1997, I also began to monitor and analyze BellSouth's compliance with its OSS obligations throughout its nine-State region, a responsibility I continued to maintain when I retired from AT&T.

7. I have had extensive involvement in the State proceedings in BellSouth's region relating to the development, testing, and evaluation of BellSouth's OSS and other subjects. I have appeared in state workshops in Alabama, Florida, Georgia, Kentucky, Louisiana, North Carolina, South Carolina, and Tennessee that covered a wide range of topics including OSS, performance measures, and third-party testing. I have also testified before the State public utility commissions in all of the States in the BellSouth region, with the exception of Florida. Finally, I have testified before this Commission in proceedings involving BellSouth's first Section 271 application for Louisiana (CC Docket No. 97-231) and, more recently, in the proceedings involving BellSouth's joint application for Section 271 authority in Georgia and Louisiana (CC Docket Nos. 01-277 and 02-35).

I. PURPOSE AND SUMMARY OF DECLARATION

8. The purpose of this Joint Declaration is to address BellSouth's contention that it provides nondiscriminatory access to its OSS, as required by the Telecommunications Act of 1996 ("the 1996 Act").[2] BellSouth bases its claim of OSS compliance almost exclusively on the Commission's *Georgia/Louisiana Order,* asserting that the Commission's finding of OSS compliance in that proceeding necessarily means that it is in compliance with its OSS obligations in the five States that are the subject of its latest application as well. *See* Application at 1-2, 60-62. Events since the issuance of the *Georgia/Louisiana Order*, however, demonstrate that – whatever the record may have shown in the *Georgia/Louisiana* proceeding – BellSouth is not currently providing parity of access to its OSS in the five States for which it now requests Section 271 authority.

9. First, as described in Part II, BellSouth has neither established nor followed an adequate change control process ("CCP"). Contrary to the expectations of the Commission in the *Georgia/Louisiana Order*, BellSouth has failed to work cooperatively with the CLECs on the prioritization of change requests, to provide CLECs with information sufficient to enable them to make informed decisions regarding the prioritization of proposed systems changes, or to implement changes in a timely manner. In addition, recent events have shown that BellSouth's "CAVE" test environment does not mirror the production environment

[2] *See* Brief in Support of Application by BellSouth for Provision of In-Region, InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina, filed June 20, 2002, at 59-60; Affidavit of William N. Stacy ("Stacy Aff."), ¶ 330; Affidavit of Alphonso J. Varner ("Varner Aff."), ¶ 186; Affidavit of David P. Scollard ("Scollard Aff."), ¶ 57; Affidavit of Alfred A. Heartley ("Heartley Aff."), ¶ 3.

such that it provides CLECs with adequate testing capability. Finally, BellSouth continues to fail to comply with the CCP.

10. Second, as described in Part III, BellSouth fails to provide nondiscriminatory access to ordering, provisioning, and billing functions. BellSouth's flow-through performance in recent months has shown no improvement, as BellSouth continues to rely excessively on manual processing of CLEC orders. The high degree of manual processing has adversely affected the CLECs' ability to compete by delaying the return of order status notices and the provisioning of orders, while increasing the likelihood of errors in provisioning. In fact, BellSouth's performance in manually processing orders, provisioning orders, and returning status notices has been inadequate. Finally, BellSouth fails to provide nondiscriminatory access to billing functions, given the constant errors in BellSouth's bills and its lack of responsiveness to CLEC requests for correction of those errors.

11. Third, as described in Part IV, KPMG's recently-issued Draft Final Report on its third-party test of BellSouth's OSS in Florida (which is not yet complete) has found numerous deficiencies in BellSouth's OSS that deny CLECs a meaningful opportunity to compete. KPMG's Draft Final Report finds that "significant issues remain unresolved" as a result of its conclusion that BellSouth did not satisfy 15 key test criteria. More than 40 "exceptions" and "observations" (including exceptions and observations regarding BellSouth's performance measures) remain open in the KPMG test, even as that test (with the exception of KPMG's Metrics test) nears completion this month.

12. Fourth, Part V responds to BellSouth's attempt to rely on performance data from other States in its region, and testing results from Georgia, to support its current application for Alabama, Kentucky, Mississippi, North Carolina, South Carolina. As the

Tennessee Regulatory Authority recently found, BellSouth's claim that its OSS are "regionwide" is not only unproven, but is belied both by the substantial variation in its performance from State to State and by recent evidence showing the unreliability of the report of PriceWaterhouseCoopers on which BellSouth relies. Moreover, if BellSouth's claim of "regionality" is correct, the results of the third-party testing of BellSouth's OSS by KPMG in Florida are plainly relevant to the issue of OSS compliance – and those results show that BellSouth continues to fall short of providing nondiscriminatory access.

II. BELLSOUTH HAS NOT ESTABLISHED, OR ADHERED TO, AN ADEQUATE CHANGE CONTROL PROCESS.

13. In its *Georgia/Louisiana Order*, the Commission reiterated its earlier rulings that, as part of its determination of whether a BOC has complied with its OSS obligations, "it must review the BOC's change management procedures to determine whether these procedures afford an efficient competitor a meaningful opportunity to compete by providing sufficient access to the BOC's OSS." *Georgia/Louisiana Order*, ¶ 179. The Commission described the scope of that review as follows:

> In evaluating whether a BOC's change management plan affords an efficient competitor a meaningful opportunity to compete, we first assess whether the plan is adequate by determining whether the evidence demonstrates: (1) that information relating to the change management process is clearly organized and readily accessible to competing carriers; (2) that competing carriers had substantial input in the design and continued operation of the change management process; (3) that the change management plan defines a procedure for the timely resolution of change management disputes; (4) the availability of a stable testing environment that mirrors production; (5) and the efficacy of the documentation the BOC makes available for the purpose of building an electronic gateway. After determining whether the BOC's change management plan is adequate, we evaluate whether the BOC has established a pattern of compliance with the plan.

Id. (citations omitted).

14. Based on the evidence of record, the *Georgia/Louisiana Order* found that BellSouth's CCP satisfied this test. The Commission cited the evidence of the then-existing status of the change control process, and noted various commitments made by BellSouth (such as its promise implement the "Top 15" change requests prioritized by the CLECs) that, if implemented, would improve the CCP. *See id.*, ¶¶ 180-197. Thus, the Commission concluded: "We recognize that BellSouth has not always implemented the Change Control Process in the most efficient manner, but because of its overall record, the recent improvements it has made [to the CCP], including the implementation of several important competitive LEC-requested features, its commitment to continued improvement, and its collaborations with competitive LECs in this process, we do not find a record that warrants checklist noncompliance." *Id.*, ¶ 194.

15. The Commission emphasized in its *Order*, however, that its assessment was based on the evidence of BellSouth's performance at that time, and that subsequent events could change its assessment. Events since the *Order*, in fact, show that BellSouth's CCP does not satisfy the requirements of Section 271.

A. CLECs Do Not Have Substantial Input In the Design and Operation of the Change Control Process.

16. In discussing BellSouth's performance in implementing change requests prioritized by the CLECs, the Commission stated:

> While we find BellSouth's performance to be adequate, we note that it is important that BellSouth continue to work collaboratively with competitive LECs through the Change Control Process on prioritization issues, provide competitive CLECs with sufficient information to be able to make informed decisions regarding prioritization of proposed systems changes, and implement changes in a timely manner. Should any problems in this regard

> develop such that the requirements of section 271 are no longer met, we are prepared to take appropriate enforcement action.

Id., ¶ 193.

17. Whatever the record may have indicated in the *Georgia/Louisiana* proceeding, however, subsequent events show that BellSouth has not adhered to the expectations of the Commission in the *Order* – and that its CCP is not currently in compliance with Section 271. BellSouth has not worked collaboratively with the CLECs on prioritization issues, has failed to provide sufficient release capacity information to CLECs, and does not implement change requests in a timely manner.

1. BellSouth Has Not Worked Collaboratively With the CLECs on Prioritization Issues.

18. BellSouth still refuses to consider or accept any change in the CCP that would end the "core deficiencies" in the CCP – BellSouth's exclusive control over the prioritization, scheduling, sequencing, and implementation of change requests. BellSouth and the CLECs discussed these core issues and other possible changes to the CCP during meetings held on March 28, April 11, and May 2, 2002. However, none of these meetings resolved the core issues. Instead, BellSouth proposed at the May 2 meeting that:

- There be separate production releases for the CLECs and for BellSouth;
- The CLECs could prioritize both CLEC-initiated (Type 5) and BellSouth-initiated (Type 4) changes, and could elect to have Type 4 change requests implemented in "their" releases;
- BellSouth would follow the prioritization and scheduling determined by the CLECs to be implemented in the CLEC releases" (subject to the "capacity constraints" described below) but will have sole control over what changes are implemented – and when – in the BellSouth releases; and

- BellSouth would implement prioritized CLEC initiated change requests within 60 weeks, but subject to "capacity constraints" – as unilaterally determined by BellSouth.

19. The CLECs could not agree to BellSouth's proposal, because it suffered from a number of deficiencies. The proposal arbitrarily divides releases between CLECs and BellSouth and focuses on the originator of the changes, rather than determine prioritization and implementation of changes according to their need through simultaneous consideration of Type 4 and Type 5 changes. Moreover, under its proposal, BellSouth would retain the same exclusive control over prioritization and implementation of its own Type 4 change requests that it had in the past (except to the extent that CLECs include Type 4 change requests in "their" releases). Finally, by insisting that its professed commitment to implement CLEC-prioritized change requests within 60 weeks of implementation be "subject to capacity constraints," BellSouth (which alone determines the amount of capacity available for implementation of change requests) would continue to exercise exclusive control over when particular change requests would be implemented, while avoiding any binding commitment to implement change requests by a date certain.

20. At the conclusion of the May 2nd meeting, BellSouth stated that it was making its "best and final" offer, and the parties agreed that they were "at an impasse" on the prioritization issue.[3] Yet, even though the CLECs did not agree to BellSouth's proposal,

[3] Minutes of May 2, 2002, CCP Process Improvement Workshop Meeting (Stacy Aff., Exh. WNS-28), at 10. BellSouth rejected the proposal presented by the CLECs, which called for a single joint prioritization and implementation process for all Type 4 and Type 5 change requests and provided for implementation of all such requests within 60 weeks of their prioritization. *Id.* at 2 and "CLEC CCP Proposal Overview" attached thereto, at 2-6.

BellSouth proceeded to implement it *unilaterally* following the meeting. Thus, for example, in its May 14th *ex parte* letter to the Commission announcing its 2003 Release Plan, BellSouth divided releases according to "BST Production" and "CLEC Production."[4] Similarly, in a prioritization meeting with the CLECs on May 22, 2002, BellSouth provided separate 2003 release capacity information for "BellSouth releases" and "CLEC releases."

21. Since the May 2nd meeting, BellSouth and the CLECs have remained at an impasse over the issues of prioritization, scheduling, sequencing, and implementation of change requests. The Commission's *Georgia/Louisiana Order* assumed that these disputes would be resolved by the Georgia PSC, stating that "through a collaborative effort in the Change Control Process actively monitored by the Georgia Commission, participants are negotiating improvements to the feature sizing and resource allocation elements of the Change Control Process as well as possibly adding intervals for implementing features that could improve the transparency of software release decisions." *Georgia/Louisiana Order*, ¶ 185 n.697. Indeed, the Georgia PSC advised the Commission that it was "conducting a comprehensive examination of the CCP," including "consideration of changes to the current Change Management Process" and a review of the "redlined/greenlined" changes to the CCP proposed by the CLECs and

[4] *See ex parte* letter from Kathleen B. Levitz (BellSouth) to Marlene H. Dortch in CC Docket No. 02-35 ("BellSouth May 14 *ex parte*"), tables entitled "BellSouth Proposal to Address Prioritization/Scheduling". A copy of the BellSouth May 14 *ex parte* is attached hereto as Attachment 1. BellSouth's Application reflects its view that it should retain exclusive control over the prioritization, implementation, sequencing, and timing of change requests. Mr. Stacy asserts that "The CCP was established to secure input from the CLEC community regarding future enhancements to existing interfaces and to have an organized means of securing, understanding, and ranking such input." Stacy Aff., ¶ 27. An effective CCP, however, is more than a process of collecting input from CLECs; it requires that BellSouth and the CLECs jointly decide such issues as prioritization and implementation of change requests.

BellSouth, respectively.[5] BellSouth advised the Commission that these GPSC proceedings "will result in further process improvements" and "should give this Commission significant assurance that BellSouth's performance in this area will continue to improve even beyond its current compliant state."[6]

22. Representatives of the Georgia PSC were present at the May 2nd meeting between BellSouth and the CLECs. At the end of the meeting, having been advised that BellSouth and the CLECs were at an impasse over such issues as prioritization, these representatives requested that the parties provide a list of the issues in dispute. *See* Stacy Aff., Exh. WNS-28 at 10, 14.

23. The Georgia PSC, however, has only recently begun efforts to resolve the impasse reached at the May 2nd meeting. Although BellSouth asserts that the Georgia PSC is engaged in "active supervision" and a "comprehensive review" of the CCP,[7] the Georgia PSC took no action on the impasse reached at the May 2 meeting until June 10, 2002, when the GPSC Staff requested BellSouth and the CLECs to jointly file by June 24, 2002, an updated change control document containing all previously agreed-upon changes and all language changes proposed by the CLECs or by BellSouth, along with a spreadsheet outlining the arguments for or

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[5] *See* Comments of the Georgia Public Service Commission filed March 5, 2002, in CC Docket No. 02-35, at 26.

[6] Supplemental Reply Brief in Support of Application by BellSouth For Provision of In-Region, InterLATA Services in Georgia and Louisiana, filed March 28, 2002, at 18.

[7] *See* Application at 71; Stacy Aff., ¶ 152.

against each disputed issue.[8] The GPSC has established no schedule for resolution of the issues in dispute. Thus, it is uncertain when, or whether, the issues will be resolved in the GPSC proceedings.

24. The parties filed the documents requested by the GPSC Staff on July 5, 2002. Copies of these documents (a "Redline/Greenline" update of the CCP Document and a matrix depicting the positions of the CLECs and BellSouth on disputed issues) are attached hereto as Attachments 2 and 3, respectively. The filing was delayed for nearly two weeks after the original filing date because, although BellSouth had already implemented its plan for separate "CLEC releases" and "BellSouth releases," BellSouth did not provide until June 24 (the original filing date) the corresponding proposed language to include in the filing. After CLECs provided BellSouth with minor revisions in their own proposed language to respond to BellSouth's, BellSouth provided revisions in its own language on June 28 and July 1 – creating issues not previously presented for discussion. As a result, CLECs were forced to seek two extensions to the original filing date. These events call into serious question the sincerity of BellSouth's professed commitment to the GPSC process, since BellSouth took an inordinately long time to propose language regarding a proposal that it had made more than a month earlier – and then created new issues that it had not even discussed with the CLECs.

25. Even leaving aside its recent conduct, BellSouth's Application gives an incorrect and highly misleading description of the CCP issues still in dispute. BellSouth asserts

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[8] A copy of the GPSC Staff's letter of June 10, 2002, is attached hereto as Attachment 4. The GPSC Staff also requested the parties to file individual comments by June 24 regarding any performance metrics benchmarks or analogs recommended at the workshop to measure BellSouth's performance in the CCP.

that the parties have reached agreement on "the bulk of the CLEC concerns," with only "three issues" remaining for resolution by the Georgia PSC: (1) prioritization and scheduling of features; (2) defect intervals for medium and low defects; and (3) requests to expedite Type 2 and Type 4 feature change requests.[9] In reality, of the 56 issues in the "tracking document" used by the parties during their recent CCP negotiations, BellSouth and the CLECs have failed to reach agreement on 25 issues – all of which have been submitted to the GPSC for resolution. Furthermore, 18 of those 25 unresolved issues involve prioritization, sequencing, and scheduling, over which BellSouth currently has exclusive control. The resolution of those issues by the Georgia PSC will determine whether the CLECs have a meaningful opportunity to compete.[10]

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[9] *See* Application at 71-72 & n.40; Stacy Aff., ¶¶ 81, 156, 162-169. BellSouth argues that the CLECs' proposal regarding the prioritization process "would require BellSouth to obtain CLEC consent before it could implement any change to its systems" that would be encompassed by the CCP, and "could easily prevent BellSouth from making system improvements focused on improving the efficiency of BellSouth's operation." Stacy Aff., ¶ 165. BellSouth's argument is a red herring. As BellSouth is well aware, the CLECs' proposal provides that in the event that the CLECs disagree with BellSouth's prioritization of change requests, BellSouth may either seek relief from the Georgia PSC or request an expedited implementation process through further negotiations with the CLECs. In addition, BellSouth's suggestion that CLECs would seek to prevent changes that improve the efficiency of its operations is illogical. CLECs have every reason to *approve* implementation of changes that improve BellSouth's operations, because they depend on them (*i.e.*, the OSS) to conduct transactions with BellSouth.

[10] Of the remaining seven issues in dispute, four involve defect intervals and three involve expedited features. As BellSouth states, the parties have reached agreement on a number of changes to the CCP during the redline/greenline negotiations, including agreement on the definition of "CLEC-affecting changes," the scope of the CCP, and disclosure of release capacity information. Application at 72; Stacy Aff., ¶¶ 82, 155-161. However, BellSouth fails to mention that many of these changes were requested by CLECs as long as two years ago (or even longer), and that only recently did BellSouth finally agree to implement them.

2. BellSouth Has Failed To Provide CLECs With the Release Capacity Information That They Need.

26. Contrary to the Commission's expectation in the *Georgia/Louisiana Order*, BellSouth has not provided CLECs with sufficient release capacity information to enable them to make informed decisions regarding prioritization of proposed changes. For example, BellSouth has not provided sizing information regarding change requests previously prioritized (but not yet implemented), the remaining individual releases scheduled for 2002, any forecast capacity reserved for the correction of defects, capacity reserved for the individual elements of its planned infrastructure changes and TAG transformation in 2003, or any historical information about the capacity utilized for releases implemented in previous years.

27. At the May 22, 2002, prioritization meeting of BellSouth and the CLECs, BellSouth failed to provide CLECs with sizing information for 2 of the 26 change requests to be prioritized, despite its previous commitment to provide such information for all change requests that were candidates for prioritization. Even the 24 change requests for which BellSouth did provide sizing information constituted less than 60 percent of the total number of change requests (42) that had not yet been scheduled for implementation at that time.

28. Furthermore, at the May 22nd prioritization meeting BellSouth provided no sizing information regarding the individual changes that it expects to include in Releases 10.6 and 11.0, which are the remaining releases scheduled for implementation in 2002. Without such information, CLECs cannot perform proper planning for changes or make meaningful prioritization decisions.

29. BellSouth also has failed to provide CLECs with information regarding the portion of the capacity reserved in forthcoming releases as a contingency for "defect" (Type

6) change requests – *i.e.*, change requests to repair defects in previously-implemented releases. This information is critical to CLECs, because – as BellSouth has acknowledged in its recent evidentiary submissions and its "CCP Quarterly Tracking Reports" – defect change requests have accounted for more than 70 percent of the change requests actually implemented by BellSouth.[11]

30. BellSouth asserts that the capacity information that it has agreed to provide will give CLECs "on a going forward basis, both a projected capacity view and actual capacity view, by quarter, to enable them to compare projections with actuals." Application at 72; Stacy Aff., ¶ 158. CLECs, however, will not be able to make such a comparison. BellSouth will issue pre-release capacity forecasts only on an annual basis, but will issue the post-capacity form on a quarterly basis. Moreover, the level of detail and groupings in the two types of forms are different.[12] The post-capacity form provides only capacity information regarding items that were actually implemented during the preceding quarter. They do not include capacity expended during that quarter on the development of items scheduled for implementation in some future quarter. Thus, a CLEC could not meaningfully compare forecasted capacity with actual capacity.

[11] *See* Stacy Decl., ¶ 136 (showing that 323 of the 430 change requests implemented by BellSouth have been defect change requests); *ex parte* letter from Joan Marsh (AT&T) to Marlene Dortsch in CC Docket No. 02-35, dated April 19, 2002, at 3-4 & Att. 1 (attached hereto as Attachment 5).

[12] A copy of the pre-release annual capacity forecast form to be used by BellSouth is attached hereto as Attachment 6. A copy of the post-release capacity form, as issued by BellSouth on May 10, 2002, is attached to Mr. Stacy's affidavit as Exhibit WNS-34.

3. BellSouth Does Not Implement Change Requests in a Timely Manner.

31. BellSouth is not fulfilling its commitment (and the Commission's expectation) that it would implement change requests in a timely manner. BellSouth has already postponed the implementation of three releases. Shortly before issuance of the *Georgia/Louisiana Order*, BellSouth postponed implementation of Release 10.5, which included certain "flow-through improvement features" that the Order cited as one of its bases for finding BellSouth's flow-through performance to be adequate. *Georgia/Louisiana Order* ¶ 146.[13] Implementation of that release, originally scheduled for May 18-19, did not occur until June 1-2, 2002 – and, as described below, the release was implemented with numerous defects.

32. More recently, BellSouth announced the postponement of two additional releases scheduled for implementation later in 2002. Implementation of Release 10.6, originally scheduled for July 13-14, has been postponed until late August. Implementation of Release 11.0, originally scheduled for November 16-17, has now been rescheduled for the first week of December. These two releases include not only additional "flow-through improvement features," but some of the "Top 15" change requests prioritized by the CLECs that BellSouth had committed to implement by the end of 2002 – a commitment noted approvingly by the Commission in its *Georgia/Louisiana Order*. *Id.*, ¶ 193. *See also* Application at 72; Stacy Aff., ¶ 160.

[13]BellSouth did not advise this Commission of the postponement of the implementation of Release 10.5 until the day before the issuance of the Commission's *Georgia/Louisiana Order*. *See ex parte* letter from Kathleen B. Levitz (BellSouth) to Marlene H. Dortch in CC Docket No. 02-35, dated May 15, 2002 ("BellSouth May 15 *ex parte*").

33. These delays are simply a further manifestation of the substantial – and continuing – delays in BellSouth's implementation of change requests. In the *Georgia/Louisiana* proceedings, AT&T showed that as of February 20, 2002, a backlog of 126 change requests (93 feature requests and 33 defect requests) had not been implemented.[14] BellSouth's reply affidavit on OSS in the same proceeding disclosed that as of March 24, 2002 – one month later than the date AT&T used for its calculations – the backlog had increased to 152 change requests.[15]

34. BellSouth's own "CCP Quarterly Tracking Report," issued in April 2002, stated that as of April 9, 2002, there was a backlog of 96 feature change requests as of April 9. Even if the 19 change requests described as "new" in the report were excluded, only 24 of the remaining 77 requests had been scheduled for implementation, and only 18 other requests had even been prioritized. The report also listed an additional 68 defect change requests that had not been implemented; even if "new" defect requests were excluded, a backlog of 52 defect requests remained, of which 10 had not been scheduled for implementation. AT&T April 19 *ex parte* at 3-4 & Att. 1.

35. The backlog of change requests has remained large since BellSouth's report. According to BellSouth's change control log and change request status reports on its web

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[14] *See* Joint Supplemental Declaration of Jay M. Bradbury and Sharon E. Norris in CC Docket No. 02-35 ("Bradbury/Norris GA/LA Decl."), ¶¶ 145-147 (attached hereto as Attachment 7).

[15] *See* Reply Affidavit of William N. Stacy in CC docket No. 02-35, ¶ 61; AT&T April 19 *ex parte* at 2.

site, as of June 11, 2002, BellSouth had not implemented 65 change requests for features and 32 defect change requests.[16] The status of the 65 pending feature requests is as follows:

- 5 of the requests are "New." Under the CCP, "new" request is a change request that has been received by the BellSouth Change Control Manager, but has not yet been validated. Although the interval for validation under the CCP is 10 business days, BellSouth did not meet that timetable for any of these five. One of the requests was filed as long ago as December 2000.

- 5 of the requests are "Pending." A "pending" request is a change request that has been accepted by the BellSouth Change Control Manager and scheduled for change review and prioritization. One of these requests was submitted in April 2000, and two others were submitted more than nine months ago.

- 42 of the requests are "Candidate Requests." A "Candidate Request" is a change request that has completed the change review and prioritization process and is ready to be scheduled for implementation in a release. 16 of these requests (or nearly 40 percent of the total) were originally submitted in 1999 or 2000. An additional 7 requests were submitted between January and June 2001. 16 of the "Candidate Requests" were prioritized in April 2001, but have still not been scheduled by BellSouth for implementation.

- 13 of the requests are "Scheduled." A "scheduled" request is a change request that has actually been scheduled for implementation through a release. In the case of these 13 requests, implementation has been scheduled for August or December 2002. For eight of these requests, the scheduled implementation date is at least 19 months (and as long as 34 months) since the date on which the request was originally filed.[17] The implementation dates scheduled for three additional requests are between 11 and 14 months from the original submission date. One of the scheduled requests was originally submitted in

[16] BellSouth's Application acknowledges that 129 change requests are currently pending, and that only 33 of those requests have been scheduled for implementation. *See* Stacy Aff., ¶ 136.

[17] Change request 364, which was submitted by AT&T in August 1999, was finally implemented by BellSouth on July 1, 2002 – nearly three years after it was submitted. This change request seeks the implementation of a process that would permit a CLEC to submit manually, and "in bulk," multiple requests for corrections of directory listings. AT&T requested the manual process only after BellSouth stated that development of an automated process was not possible. There is no justifiable basis for BellSouth's delay in implementing this manual process, which would be relatively simple to implement.

August 1999; the majority of the remaining requests were submitted before December 2000.

36. Of the 65 backlogged feature change requests, 36 are Type 5 (CLEC-initiated), 10 are Type 4 (BellSouth-initiated), and 19 are Type 2 (regulatory). Tables summarizing these change requests are attached hereto as Attachment 8.

37. BellSouth has advised the CLECs that the two releases scheduled for implementation for the remainder of 2002 – release 10.6 and 11.0 – are "full" and therefore cannot include any change requests other than those already scheduled for implementation in those releases. Thus, implementation of the 52 New, Pending, or Candidate feature change requests in the backlog will probably not occur until at least May or June 2003, when BellSouth has scheduled the first 2003 release that could include any such requests.

38. The status of the 32 pending defect change requests is as follows:

- 21 of the defect change requests are Validated. A "validated" request is a change request on which BellSouth has performed an internal analysis and determined that the defect is a validated defect. Seven (one-third) of these 21 requests were submitted more than 120 days ago, and four of them were submitted at least 14 months ago (one in September 2000).

- 11 of the defect change requests are Scheduled. For the majority of these requests, the scheduled implementation date will occur at least 120 days after the request was filed, even though BellSouth has agreed (first for purposes of the Service Quality Measurements, and subsequently in its recently-proposed changes to the CCP) that the maximum possible period is 120 days from submission.[18] Four other requests will be between 102 and 116 days old when implemented.

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[18] Under the CCP, BellSouth is required to implement a defect change request within 10 days when the request is "high-impact," and within 90 days when the request is "medium-impact." *See* Stacy Aff., ¶ 121 ("high-impact" defect "causes impairment of critical system functions and no electronic workaround system exists," "medium-impact" defect "causes impairment of critical system functions, though a workaround solution does exist," and "low-impact" defect "causes

39. Tables summarizing the 32 defect change requests are attached hereto as Attachment 9.[19] This backlog belies BellSouth's assertion that it "continues to correct defects within the time frames set forth in the CCP." Stacy Aff., ¶ 130.[20]

40. The size of this backlog of change requests, and the long time frames that have elapsed since submission of the change requests, shows that – contrary to the Commission's previous finding in its *Georgia/Louisiana Order* – defects have not "been corrected quickly and within the timeframes set by the Change Control Process." *Georgia/Louisiana Order*, ¶ 194. As shown in Attachment 10 hereto, for example, the implementation intervals for those changes implemented (or scheduled for implementation) in 2002 have been unreasonably long by any standard.[21]

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inconvenience or annoyance"). With respect to "low-impact" defect requests, BellSouth previously agreed in the CCP only to use its "best efforts" to implement such requests in a timely manner. However, for purposes of the Service Quality Measurements, BellSouth agreed in early 2002 to a 120-day deadline for implementation of low-impact defect change requests. As previously stated, BellSouth's recent update to its proposed CCP language now also reflects a 120-day deadline.

[19] The calculation of 32 defect change requests in the backlog is conservative, because it does not include five additional change requests that, according to BellSouth's current change control log, BellSouth has either "determined to not be a defect" and six other change requests for which BellSouth has requested the originator to provide additional information. Nor does our calculation take into account documentation defects.

[20] On July 9, 2002, the Florida PSC, recognizing that the existing intervals for the correction of defects are too long and discriminate against CLECs, adopted its Staff's recommendation to reduce the intervals through the implementation of a new set of performance metrics. *See* Issue 2 of the June 27, 2002, FPSC Staff Recommendation attached hereto as Attachment 11. The intervals adopted are 10 days for high-impact defects, 30 days for medium-impact defects, and 45 days for low-impact defects.

[21] None of the performance metrics concerning the CCP that BellSouth has recently agreed to implement will fully measure whether it implements change requests in a timely manner. As the

41. Shortly before the issuance of the *Georgia/Louisiana* Order, BellSouth claimed to this Commission that "according to release capacity projections, it is possible to eliminate approximately 80% of the 'backlog' [of] change requests by next year." *See Georgia/Louisiana Order*, ¶ 193 n.738. However, the sheer volume of the backlog, by itself, calls into serious question whether BellSouth can meet even that modest commitment, particularly in view of its slow implementation of change requests in the past.[22]

42. BellSouth's claim that it can eliminate 80 percent of the backlog by the end of 2003 is also dubious because it is based on the assumption that there will be "no industry release in calendar year 2003." BellSouth May 14 *ex parte* at 1 (Attachment 1 hereto). BellSouth, however, acknowledged in its May 14 *ex parte* letter that an industry release (ELMS-6) *is* scheduled for implementation in 2003.[23] BellSouth further acknowledged that, if ELMS-6 is implemented in 2003, the two "CLEC production releases" that it has scheduled for that year absent an industry release would be reduced to one, and the capacity of those releases would be

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Commission has previously noted, two of those metrics simply measure the extent to which BellSouth meets the 10-business-day deadline for validating or rejecting a change request after its submission, and the percentage of change requests that BellSouth denies after submission for any of the reasons for which it is allowed to do so under the CCP. *Georgia/Louisiana Order*, ¶ 183 & n.685. Although another metric measures the percentage of software defects corrected within their appropriate interval, that metric does not measure whether *feature* change requests are implemented in a timely manner. *id.*, ¶ 195 & n.750. Even leaving aside the limited scope of these metrics, BellSouth has refused to agree to include any of them in its Performance Assurance Plan – and therefore will pay no penalty for inadequate performance.

[22] BellSouth, in fact, makes no such claim or promise in its current Application.

[23] *See* BellSouth May 14 *ex parte* at 1 & table entitled "BellSouth Proposal to address Prioritization/Scheduling – 2003 Release Plan with an Industry Release."

reduced by 50 percent (from 1256 units to 628 units).[24] Similarly, the number of "BellSouth production releases" would be reduced from three to two in 2003, and the capacity of those releases would also be reduced from approximately 1256 units to 628 units.[25]

43. Even if no industry release occurs, BellSouth's plan to eliminate 80 percent of the backlog of change requests by the end of 2003 is both arbitrary and inadequate. In response to discovery requests by the CLECs in the current Section 271 proceeding before the Tennessee Regulatory Authority, BellSouth stated that it arrived at the 80 percent figure by estimating that: (1) 1,256 units (100 release cycle hours) would be available in CLEC production releases if no industry release occurred in 2003; and (2) 1,518 units of capacity would be required to reduce the Type 2 flow-through change requests, and Type 5 change requests.

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[24] *Id. See also* Stacy Aff., Exh. WNS-32 (tables entitled "Option A" and "Option B"). A unit is equal to 100 release cycle hours, which are the total number of hours estimated for planning, analysis design, code development, testing and implementation for a single change request. A unit is approximately three man-weeks of week.

[25] BellSouth May 14 *ex parte* (table entitled "BellSouth proposal to address Prioritization/Scheduling – 2003 Release Plan with an Industry Release"). At a CCP meeting held on June 2, 2002, the CLECs voted (by a 5-to-2 vote, with AT&T dissenting) in favor of implementation of the ELMS-6 industry standard release in 2003. Stacy Aff., ¶ 158 n.21. However, the CLECs' vote provides no basis for BellSouth's decision to reduce the total capacity available for implementation of change requests due to the implementation of an industry standard release. According to BellSouth's May 14 *ex parte* letter, the total capacity that BellSouth assigns for all "BellSouth releases" and "CLEC releases" in 2003 is virtually the same regardless of whether an industry release occurs – approximately 2,512 units absent an industry standard release, and 2,656 units in the event that an industry standard release is implemented. As described below, BellSouth has provided no reason why, in the event of an industry standard release, it could not simply increase the total available capacity to account for that release, rather than reduce the capacity available for implementation of change requests.

BellSouth then divided the 1,256 units by 1,581 units, producing a percentage of 79 percent.[26] BellSouth, however, supplied no basis for its determination of the "available" number of units of capacity. Furthermore, even if correct, BellSouth's various "estimates" fail to include other types of change requests – including Type 6 (defect) change requests, Type 4 (BellSouth-initiated) change requests, and any Type 2 (regulatory) change requests that do not involve flow-through enhancements. BellSouth's explanation of its methodology is thus inconsistent with its May 14 *ex parte* letter in the *Georgia/Louisiana* proceeding, which purported to include *all four* of these types of change requests in the calculation of the total capacity of "CLEC releases."[27]

44. In addition to the lack of any reasoned basis for its estimates, BellSouth's timetable for elimination of the backlog is inadequate. As described above, many of the change requests in the current backlog were submitted two or more years ago, and still have not been scheduled for implementation. Under BellSouth's release plan for 2003, however, as a practical matter no prioritized change requests are likely to be implemented until May or June of that year,

[26] *See* BellSouth's Response to Consolidated CLEC First Data Requests in Tennessee Regulatory Authority Docket No. 97-00309, served May 23, 2002 ("BellSouth Tennessee Responses"), Response to Item No. 10, at 2-3. A copy of BellSouth's response is attached hereto as Attachment 12.

[27] *See* BellSouth May 14 *ex parte*, "BellSouth Proposal to address Prioritization/Scheduling – 2003 Release Plan without an Industry Release" (Attachment 1 hereto). *See also* Stacy Aff., ¶158 & Exh. WNS-32, (tables entitled "Option A" and "Option B", presented to CLECs on May 10, 2002). BellSouth's current process allows CLECs to include Type 4 change requests in "CLEC releases" if they wish to do so. CLECs, in fact, have given some Type 4 requests a higher priority than some Type 5 requests in their past, because their need for a particular change does not depend on whether it is originally requested by BellSouth or by the CLECs.

when a "CLEC Production" release is scheduled.[28] According to BellSouth's May 14 *ex parte* letter, the only release that BellSouth has scheduled for implementation in 2003 prior to May of that year is a "BellSouth production" release, scheduled for March 2003, which will involve the migration of BellSouth's linkage systems to a new platform, and of the TAG interface to a new programming language. Since the filing of its May 14 *ex parte* letter, BellSouth's CCP managers have announced that the March 2003 release will not implement any of the backlogged change requests.[29]

45. Aside from the March 2003 BellSouth "infrastructure" release, BellSouth's release plan for 2003 calls for implementation (even absent an industry standard release) of only four releases – two "CLEC production" releases and two "BellSouth production" releases. According to BellSouth, each of these releases will include an unspecified number of Type 6 (defect) change requests.[30] Based on past experience, it is likely that defect change

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[28] BellSouth's 2003 release plan calls for the implementation of the first "CLEC production" release in May 2003 if an industry release occurs during that year, and in June 2003 if no industry release occurs. *See* Stacy Aff., Exh. WNS-32 (tables entitled "Option A" and "Option B").

[29] Although the "migration" that will occur under the March 2003 release is a change that will clearly affect CLECs, BellSouth has taken the position that it is not required to submit a change request for the release. This is but another instance of BellSouth's disregard of the CCP.

[30] BellSouth May 14 *ex parte*, "BellSouth Proposal to address Prioritization/Scheduling – 2003 Release Plan"; Stacy Aff., Exh. WNS-32 (tables entitled "Option A" and "Option B"). Similarly, BellSouth's release plan provides that, if an industry release occurs in 2003, Type 6 change requests would be included in the one "CLEC production" release scheduled for next May, and the one "BellSouth production" release (not involving "infrastructure" changes) scheduled for September 2003. *Id.*

requests will constitute the overwhelming majority of change requests in these releases – thus limiting the capacity available for implementation of the backlogged change requests.[31]

46. BellSouth has offered no justifiable reason why, under either of the scenarios it offers, the total amount of capacity available for "CLEC releases," "BellSouth releases," and industry standard releases would be limited to approximately 2,500 units. Indeed, recent admissions by BellSouth indicate that it could substantially increase the total "available" capacity. Under its scenario assuming the absence of an industry standard release in 2003, BellSouth allocates 419 units for its "infrastructure production release" and 506 units for five "maintenance releases" that will be implemented primarily for the purpose of correcting defects. Under its scenario assuming that an industry standard release will be implemented, BellSouth allocates 314 units for the infrastructure production release, and 348 units for the five maintenance releases.

47. At the May 22, 2002 CCP prioritization meeting, however, BellSouth stated that the objectives of the infrastructure and maintenance releases could be achieved using only the lower number of units assigned under the assumption of an industry standard release. In short, BellSouth has already reserved to itself 263 units of capacity more than were necessary (105 units for the infrastructure production release and 158 units for the maintenance releases).

48. BellSouth's record of implementation of change requests in 2002 to date, and its schedule for implementation of additional change requests during the remainder of 2002,

[31] BellSouth has indicated that it intends to make greater use of Maintenance Releases in the future to implement defect corrections. It remains to be seen, however, whether this new policy will reduce the volume of defect corrections implemented in production releases.

also belie the notion that the backlog will be reduced by 80 percent by the end of 2003. As Attachment 10 hereto shows, more than 75 percent of the 108 change requests implemented by BellSouth from January 1 through June 2, 2002 were defect change requests. Only 25 feature change requests were implemented during that period. For the remainder of 2002, BellSouth has scheduled the implementation of only 12 feature change requests. In other words, during the second half of 2002 BellSouth will decrease its rate of implementation of feature change requests by more than 50 percent. Even assuming that BellSouth implements these additional twelve change requests, by the end of 2002 it will have implemented only 37 feature change requests. If that rate continues in 2003, BellSouth cannot possibly eliminate 80 percent of the backlog by the end of that year.[32]

49. Moreover, BellSouth's implementation of feature change requests in 2002 reflects its abysmal failure to implement such requests in a timely manner. As Attachment 10 demonstrates, many of the change requests were not implemented until two to three years after their original submission. In BellSouth's most recent release, Release 10.5, most of the feature change requests were submitted between August 1999 and August 2000 – *i.e.*, between 21 and

[32] If BellSouth implements twelve additional feature change requests by the end of 2002 as scheduled, at the end of the year 53 such requests will still need to be implemented (the existing backlog of 65 feature change requests minus the 12 requests to be implemented during the rest of 2002). Assuming that BellSouth implemented 37 change requests in 2003 (the same number as that projected for 2002), a backlog of 16 change requests – or approximately 30 percent of the total – would still not have been implemented by the end of that year. The 30 percent figure is overly optimistic, however, because it assumes the filing of *no* additional feature change requests through the end of 2003. That assumption is, of course, unrealistic, since dozens of such requests have been filed each year since the CCP was implemented in 1999. Thus, if the implementation rate for 2003 remained at 37 feature change requests per year, by the end of 2003 the backlog of such requests would likely be even greater than 16 change requests.

33 months prior to their actual implementation. Even if the two remaining releases that BellSouth has planned for 2002 (Releases 10.6 and 11.0) are implemented on schedule, for nearly half of the feature change requests in those releases the intervals between submission of the request and actual implementation will be between 19 and 30 months.

50. BellSouth's actual and planned implementation of defect change requests during 2002 further undermines its contention that it will eliminate 80 percent of the existing backlog by the end of 2003. More than 20 of the defect change requests implemented this year were designed to correct defects in the parsed customer service record ("parsed CSR") that BellSouth implemented in January. *See* Attachment 10 at 4-5. BellSouth implemented the parsed CSR defect change requests within two months of their original submission, even though it asserted that the defects were "low-impact." Other defect change requests, however, have taken an inordinately long time to implement. For example, at the same time it was implementing the parsed CSR defect change requests, BellSouth was implementing other defect change requests that had been submitted between 126 and 169 days before. *Id.* at 3-4. BellSouth's Release 10.5 – which was implemented more than two months after completion of the implementation of the parsed CSR defect change requests – included nine defect change requests that had been submitted between 106 and 295 days prior to the actual implementation date. *Id.* at 5. In Releases 10.6 and 11.0, scheduled for implementation later in 2002, all but one of the defect change requests were submitted at least 102 days prior to the scheduled implementation – including one request that was submitted *412 days* prior to its scheduled implementation date of August 24, 2002. *Id.* at 6.

51. The size and age of the backlog of change requests confirms that, as previously described, BellSouth continues to make the final decisions regarding the

prioritization, scheduling, sequencing, and implementation of change requests through its internal processes – from which CLECs are entirely excluded. KPMG has found this exclusion to be a significant deficiency in the current CCP. Last July, KPMG opened Exception 88, which criticized BellSouth's prioritization process because it precludes CLECs from involvement in the final prioritization decisions and thus "inhibits one of the primary objectives of the CCP – 'to allow for mutual impact assessment and resource planning to manage and schedule changes.'" *See* KPMG Exception 88, dated July 19, 2001 (Attachment 13 hereto). Although KPMG has issued two subsequent amendments to Exception 88 since last July, and BellSouth has provided KPMG with responses to both amendments, the exception remains open (and KPMG's concerns persist) notwithstanding the improvements that BellSouth claims to have made to the CCP during the last few months.[33]

52. Because BellSouth had not satisfied its concerns regarding Exception 88, KPMG's recently-issued Draft Final Report on its Florida third-party test[34] found that BellSouth did not satisfy three critical Evaluation Criteria of the test regarding the change management process. First, KPMG found that BellSouth had not satisfied Evaluation Criterion PPR1-3, which examined whether the CMP "has a framework to evaluate, categorize, and prioritize proposed changes." KPMG Draft Final Report at RMI-14 – RMI-16. KPMG noted that "the

[33] *See* KPMG Second Amended Exception 88, dated January 28, 2002 (attached hereto as Attachment 14); BellSouth's Amended Response to Second Amended Exception 88, dated May 1, 2002 (attached hereto as Attachment 15); Stacy Aff., Exh. WNS-52 at 7-9.

[34] KPMG Consulting, "Florida Public Service Commission – BellSouth Telecommunications, Inc. – OSS Evaluation Project," Draft Final Report, Version 1.0, dated June 21, 2002 ("KPMG Draft Final Report").

framework for the evaluation, categorization, and prioritization of Change Requests did not provide [CLECs] with the ability to prioritize, assess the impact of, and plan resources for all Change Requests affecting the CLEC community." *Id.* at RMI-15.

53. Second, KPMG concluded that BellSouth had not satisfied Evaluation Criterion PPR1-4, which reviewed whether the CMP "includes procedures for allowing input from all interested parties." *Id.* at RMI-16 – RMI-17. KPMG found that {a framework for [CLECs] to provide input to the [BellSouth] internal change management process did not exist." *Id.* at RMI-17.

54. Third, KPMG found that BellSouth had not satisfied Evaluation Criterion PPR1-8, which reviewed whether "Criteria are defined prioritizing and assigning severity codes to Change Requests." *Id.* at RMI-20 – RMI-22. Although it acknowledged that the CMP includes such criteria, KPMG nonetheless found that they do "not allow [CLECs] to prioritize, assess the impact of, and plan resources for all Change Requests affecting the [CLEC] community." *Id.* at RMI-21.[35]

55. Finally, BellSouth's own data regarding the number of implemented change requests reflect its failure to implement change requests in a timely manner. BellSouth cites the 430 change requests that it has implemented (including 44 BellSouth-initiated requests

[35] In its comments on all three of these evaluation criteria, KPMG noted BellSouth's recent proposal to divide all release capacity that remained after implementation of Type 2 (regulatory) and Type 6 (defect) change requests equally between "CLEC releases" and "BellSouth releases." However, KPMG concluded that Exception 88 would remain open because BellSouth had not implemented its proposal, and KPMG therefore had not yet had an opportunity to review the proposal in operation. *See* KPMG Draft Final Report at RMI-16 (Evaluation Criterion PPR1-3), RMI-17 (Evaluation Criterion PPR1-4), RMI-22 (Evaluation Criterion PPR1-8).

and 43 CLEC-initiated requests) as proof that it "moves expeditiously in implementing eligible change requests once they are prioritized." Application at 76-77; Stacy Aff., ¶ 136. However, of those 430 change requests, 323 – or 75 percent of the total – were defect change requests. Prioritized change requests (either CLEC-initiated or BellSouth-initiated) only constituted approximately 20 percent of the total. *Id.*[36] Furthermore, the 87 prioritized change requests were implemented over a three-year period (*i.e.*, since the adoption of the original CCP in June 1999). Thus, over the last three years BellSouth has implemented an average of less than 30 prioritized change requests per year, and fewer than 3 such requests per month – a reflection of the slow pace at which implementation actually occurs and the improbability of a reduction in the backlog in 2003.

B. BellSouth Fails To Provide an Adequate and Stable Test Environment.

56. In its *Georgia/Louisiana Order*, the Commission reiterated that a BOC must offer an adequate and stable test environment in order to demonstrate compliance with its OSS obligations:

> A stable testing environment that mirrors the production environment and is physically separate from it is a fundamental part of a change management process ensuring that competing carriers are capable of interacting smoothly and effectively with a BOC's OSS, especially in adapting to interface upgrades. Moreover, a testing environment that mirrors production avoids a "competing carrier's transactions succeeding in the testing environment but failing in production."

[36] Similarly, according to BellSouth's data, defect change requests accounted for 24 (or 70 percent) of the 35 change requests that it implemented in May and early June 2002. Stacy Aff., ¶ 136.

Georgia/Louisiana Order, ¶ 187 (quoting *Texas 271 Order*, ¶ 132). Based on the evidence in the record before it, the Commission found that BellSouth's testing environment satisfied these criteria. *Georgia/Louisiana Order*, ¶¶ 187-189.

57. Recent events, however, have demonstrated that – contrary to the Commission's assumption in the *Georgia/Louisiana Order* – BellSouth's CLEC Application Verification Environment ("CAVE") does not mirror the production environment.[37] Those differences became apparent when BellSouth's Release 10.5 was implemented in early June 2002 with numerous defects (¶¶ 64-68, *infra*). In its Application, BellSouth effectively admits that several of these defects were not observed prior to implementation of Release 10.5 because CAVE does not mirror the production environment. In explaining certain defects in the release, BellSouth expresses its "belief" that:

- One of the defects was not detected "because of minor differences in the system test environments and production and the volumes experienced in production." Stacy Aff., ¶ 145.
- Although one feature that proved defective in production had not shown failure in the CAVE environment, "it was not detected because BellSouth's test cases are executed using 'test' CLEC OCN accounts and CSRs with the same OCN data." *Id.* In other words, the problem occurred because, as AT&T has previously shown, BellSouth requires that CLECs using CAVE submit orders with codes identifying the transactions as BellSouth-originated, not as CLEC-originated. This requirement precludes the CLECs' experience in CAVE from being a reflection of the actual production environment. Bradbury GA/LA Decl., ¶ 215.

[37] The other test environment offered by BellSouth, the "original" testing environment, does not fully meet the needs of CLECs, because it cannot be used to test changes to an existing interface. It can be used only for implementing a new interface (including a conversion from one industry standard to another). *See Georgia/Louisiana Order*, ¶ 187 n.701; Application at 73; Stacy Aff., ¶ 99.

- Another defect "was not detected because this situation only occurred when he existing account was a Quick Service Account, and there were no QuickService accounts in BellSouth's test suite." Stacy Aff., ¶ 145. QuickService, however, is probably the most common type of account in BellSouth's inventory.[38] That BellSouth did not build such accounts into CAVE is a further indication of the substantial difference between CAVE and the production environment.

58. AT&T's own experience confirms that CAVE fails to mirror the production environment. In early 2002, because AT&T wished to use CAVE for various purposes, including testing of the parsed CSR. AT&T and BellSouth entered into a testing agreement and held numerous discussions to clarify AT&T's objectives for the test. Yet, when AT&T attempted to test BellSouth's parsed CSR functionality in CAVE in April 2002, it simply received an error message – even though BellSouth had implemented such functionality in actual commercial production in January 2002. When AT&T requested an explanation from BellSouth, BellSouth claimed that it was unaware that AT&T intended to test the parsed CSR. BellSouth's explanation was illogical, since AT&T's testing of the parsed CSR was expressly listed among the test cases in the parties' testing agreement and had previously been discussed by the parties. Clearly, BellSouth had not yet configured CAVE to reflect the actual production environment.

59. BellSouth admits that AT&T experienced problems in testing the parsed CSR functionality on CAVE, but reasons that "there was no testing of the parsed CSR functionality provided for in the test plan." Stacy Aff., ¶ 112. BellSouth's response, however, begs the question. The parsed CSR functionality had already been operational in the production

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[38] QuickService is a service that maintains "warm dial tone" (access to 911, operator assistance, and BellSouth itself) in a residence or small-to-medium-sized business when it is vacated by the existing customer.

environment for three months when AT&T attempted to test it. If CAVE mirrored the production environment, a CLEC would be able to test that functionality *without* specific mention of it in a test plan. Yet BellSouth was required to make special modifications in CAVE before AT&T could test the parsed CSR. *Id.*

60. In addition to its failure to make CAVE mirror the production environment, BellSouth has used CAVE not as a means of assisting CLECs, but as a tool to hinder them from preventing the implementation of changes with defects that have been detected through use of that environment. In June 2002, after months of persistently opposing the idea, BellSouth finally agreed to a "go/no go vote" procedure, under which CLECs will be allowed to participate in a decisionmaking process to decide whether a forthcoming BellSouth release will be implemented as scheduled. This procedure seeks to ensure that a scheduled release will not be implemented if, either through testing of the proposed release or a review of the applicable documentation, CLECs discover that the release would prevent them from submitting orders successfully. *Texas 271 Order*, ¶ 112. Although the Commission has ruled that BellSouth is not required to implement a "go/no go vote" procedure, it also stated that "it is crucial that a change management process provide assurances that changes to existing OSS interfaces will not disrupt competing carriers' use of the BOC's OSS." *Georgia/Louisiana Order*, ¶ 181 & n.677.[39]

61. Despite its overall agreement to the overall concept of a "go/no go vote" procedure, BellSouth has stated that CLECs may vote in that procedure only to the extent that

[39] The Commission found that BellSouth's versioning process was sufficient to protect CLECs from premature cutovers and disruptive changes to their OSS. *Georgia/Louisiana Order*, ¶ 181. However, as the Commission acknowledged, that policy only applies to industry standard releases – not to a BellSouth "dot" release that modifies an industry standard. *Id.* n.675.

they have actually tested the release in question in BellSouth's testing requirement.[40] Stated otherwise, if a CLEC has not tested the release prior to the scheduled implementation date, BellSouth will not allow that CLEC to cast a vote on the "go/no go" question, even if the CLEC will be impacted by the release. Such a condition is patently unreasonable, because CLECs may not always be able to test a release before the scheduled implementation date. When BellSouth announces its plans to implement a particular release, CLECs may need to make changes on their side of the gateway in order to adapt them to the proposed changes. Until that time, use of the testing environment will not be possible. Because such development can take substantial time, CLECs may not be in a position to perform testing until after the release is actually implemented. Even if it has not completed such development, however, a CLEC may find that the proposed release is flawed through review of the applicable documentation, the reporting by BellSouth of internal testing results, or the results of CAVE testing by other CLECs. In such circumstances, it would be wholly unreasonable to exclude the CLEC from having a voice in whether the release goes forward as scheduled.

62. The failure of CAVE to mirror the production environment, and BellSouth's attempt to use the existence of its test environment to limit the availability of the "go/no go vote" procedure, are particularly harmful to the CLECs in view of the evidence of BellSouth's persistent failure in the past to conduct sufficient internal testing before implementing its releases – and the numerous instances in which BellSouth implemented releases having serious flaws. *See* Bradbury GA/LA Decl., ¶ 222; Bradbury/Norris GA/LA

[40] *See* Stacy Aff., ¶ 115 ("BellSouth has offered the CLECs *that have tested a release in CAVE* to make a 'go/no go vote recommendation'") (emphasis added).

Decl., ¶ 175. The sheer volume of defect change requests (which have accounted for more than 70 percent of *all* change requests implemented by BellSouth) reflect BellSouth's failure to conduct adequate internal testing prior to implementation. Although the Commission concluded in the *Georgia/Louisiana Order* that BellSouth was performing adequate internal testing before implementing software releases, it simultaneously expressed its concern "that software releases with numerous defects inhibit smooth transitions between releases," and stated that it intended "to monitor BellSouth's performance in that regard." *Georgia/Louisiana Order*, ¶ 195.

63. Despite the Commission's admonition, BellSouth still fails to conduct adequate internal testing before releasing software – as reflected by the sheer volume of defect change requests that it has been required to issue. In March 2002, after BellSouth submitted its Georgia/Louisiana application, KPMG issued an Exception Report in its third-party testing in Florida, finding that "BellSouth did not completely test code changes for Releases 10.2 and 10.3 prior to these releases going into production," and implemented those releases with "no apparent plan to mitigate the adverse impact of reduced pre-release testing." *See* KPMG Exception 157, dated March 4, 2002 (Attachment 16 hereto). As a result of the defects in the releases, BellSouth identified and published more than 40 defect change requests. *Id.* at 1-2.

64. Exception 157 remains open today. In fact, following the implementation of Release 10.5 last month, KPMG issued an amendment to Exception 157 on June 14, finding that Release 10.5 also had "significant defects in the software when . . . placed into the production environment."[41] Although BellSouth now alleges that these defects were "minor,"

[41] Amended KPMG Exception 157, dated June 14, 2002, at 5-6 (attached hereto as Attachment 17). BellSouth states that it disagrees with Exception 157, but provides no basis for its position.

KPMG clearly disagreed. KPMG's amendment to Exception 157 states that "BellSouth's internal software testing may affect a CLEC's ability to efficiently execute transactions with BellSouth, resulting in CLEC customer dissatisfaction." *See* Stacy Aff., ¶ 147; Amended KPMG Exception 157 at 6.

65. In its Draft Final Report, issued on June 21, KPMG found that BellSouth had not satisfied three test criteria due to the problems identified in Exception 157, because "the BellSouth software/interface development methodology is not consistently followed," and "the BellSouth Quality Assurance process is not consistently followed for new software releases." First, BellSouth did not satisfy Evaluation Criterion PPR5-2, which reviewed whether "BellSouth has a software/interface development methodology that addresses requirements and specification definition, design, development, testing, and implementation." KPMG Draft Final Report at RMI-81 – RMI-82. Second, BellSouth did not satisfy Evaluation Criterion PPR5-3 – *i.e.,* whether BellSouth's interface development methodology "has a defined quality assurance process." *Id.* at RMI-84 – RMI-85. Third, BellSouth did not satisfy Evaluation Criterion PPR5-17, which reviewed whether a "software and interface development methodology exists that defines the process for release management and control." *Id.* at RMI-101 – RMI-102.

66. The fact that Release 10.5 was so defective when implemented is particularly striking in view of BellSouth's assertion that it had delayed the implementation of this release "to ensure that [it] "met the quality standards committed to by BellSouth." *See* Stacy

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Stacy Aff., ¶ 148. BellSouth simply contends, without elaboration, that the documents on which KPMG allegedly based its assumptions "do not evidence any failure to test but rather just indicate risks inherent in any expedites." *Id.*

Aff., ¶ 142. Yet, even prior to implementation of Release 10.5, BellSouth advised the CLECs of two defects in the release – which, it rationalized, were simply "low-impact" (but which it now admits were "medium-impact"). *See id.*, ¶ 143. After Release 10.5 was implemented, BellSouth announced that there were four other defects in the release: (1) slow responses to queries regarding loop make-up information; (2) erroneous rejections of orders involving the migration of a customer from one CLEC to another on the ground that the CLEC did not own the account[42]; (3) erroneous responses to orders for a new installation (advising the CLECs that they were required to order an additional line); and (4) rejections of all orders for DSL, EELs or UNE copper loops on any version of TAG other than the current version.[43]

67. A review of BellSouth's Daily Change Request Activity Report revealed that there are *eleven other* software defect change requests involving features associated with Release 10.5 that have been submitted in addition to the six requests that BellSouth has expressly acknowledged. The matrix below describes the number, the impact (as classified by BellSouth), and the current status of the Release 10.5 software defects.

Description	Number	Impact	Scheduled Correction
Software Defects Identified by BellSouth Before Implementation	2	Low	1 – August 1 – Open
Software Defects Identified by CLEC/BellSouth Transactions After Implementation	15	8 High 6 Medium 1 Low	12 – Corrected 1 – August 2 – Open

[42] CLECs using BellSouth's testing environment did not receive such responses because they are required to use *BellSouth's* ordering codes in that environment, rather than their own codes.

[43] Such orders were not rejected in the testing environment offered by BellSouth because that environment uses only one version of TAG (in contrast to the production environment, where BellSouth offers multiple "dot" versions of TAG at any given time).

Total	17	8 High 6 Medium 3 Low	12 – Corrected 2 – August 3 – Open

In addition to these software defect change requests, BellSouth's Daily Change Request Activity Report discloses an additional six defect change requests involving defects in documentation governing the release.[44]

68. As indicated in the matrix, BellSouth claims to have corrected only twelve of the seventeen software defects to date. The two software defects that BellSouth found prior to implementation of the release have still not been corrected; one of those defects is scheduled for correction as part of Release 10.6 (scheduled for implementation in August), while the other defect still has no scheduled correction date. Of the defects found after implementation of Release 10.5, but not yet corrected, one is scheduled for correction in August and two more have no scheduled correction date. The six documentation defects are scheduled for correction on August 26.

C. BellSouth Has Exhibited a Pattern of Noncompliance With the CCP.

69. BellSouth's latest Application fails to demonstrate a "pattern of compliance" with the CCP, as the Commission has required. *See, e.g., Georgia/Louisiana Order*, ¶ 179; *New York 271 Order*, ¶ 112; *Pennsylvania 271* Order, App. C, ¶ 43. To the contrary, BellSouth has failed to adhere to the CCP. *See* Bradbury Opening GA/LA Decl., ¶¶ 228-235; Bradbury/Norris Joint GA/LA Decl., ¶¶ 179-193.

[44] In its Draft Final Report on its Florida OSS test, KPMG reports a total of 18 software defects and 6 documentation defects for Release 10.5. *See* KPMG Draft Final Report at RMI-81, RMI-84, RMI-101 - RMI-102.

70. Even as its 271 application for Georgia and Louisiana was being approved by this Commission, BellSouth was again failing to comply with the CCP in connection with its Change Request 0756, which is ostensibly intended to eliminate BellSouth's incorrect routing of intraLATA calls originated by CLEC customers who are provided voice service through the UNE platform. Although BellSouth is required to route the calls to the point of presence or network of the carrier that the customer has designated as its intraLATA carrier, on numerous occasions BellSouth has misrouted the call to the wrong intraLATA carrier. When such calls are misrouted, BellSouth usually routes them through its own switch – making itself the intraLATA carrier. AT&T's records show that a substantial number of intraLATA calls of its customers were misrouted to the wrong carrier. MCI has experienced the same problem.[45]

71. The misrouting of intraLATA calls has a substantial, and adverse, affect on the customer, the "correct" intraLATA carrier chosen by the customer, and the CLEC. From the customer's standpoint, the calls are not carried by the carrier that he/she selected. The intraLATA provider selected by the customer does not receive the revenue received from the intraLATA call. In fact, the "correct" intraLATA provider is charged by BellSouth for transmission of the records for those calls on the Daily Usage File, even though the calls should never have been routed through BellSouth's switch in the first place. The CLEC will be adversely affected by the misrouting of intraLATA calls because it will be blamed by the customer for the problem. By contrast, the misrouting of intraLATA calls benefits BellSouth,

[45] *See Georgia/Louisiana Order*, ¶ 146; Declaration of Sherry Lichtenberg filed March 4, 2002, in CC Docket No. 02-35, ¶ 17 (testifying that as of January 25, 2002, more than 47,000 of MCI's records showed incorrect routing of intraLATA calls).

which receives revenue from the intraLATA calls, and payments from the CLEC for the DUF records, to which it is not entitled.

72. In the *Georgia/Louisiana* proceeding, BellSouth advised the Commission that the intraLATA misrouting problem was "only a problem in Georgia," and was due to a "slight geographic difference" between flat-rate local calling areas and measured-rate local calling areas. *See Georgia/Louisiana Order*, ¶ 269 & n.1058.[46] However, Change Request 0756, which BellSouth submitted on April 26, 2002, is flatly inconsistent with that explanation. Change Request 0756, which BellSouth describes as "UNE-P call scope changes," requests the updating of existing universal service ordering codes ("USOCs"), and the addition of numerous State-specific USOCs, for *all nine States in the BellSouth region*. *See* Stacy Aff., ¶ 271 & Exh. WNS-46 at 2. As part of this change request, BellSouth proposes numerous amendments to its regionwide user requirements for UNE-P call scope changes.[47] Furthermore, although BellSouth previously advised this Commission that the misrouting problem affected "very few intraLATA calls," it recently acknowledged to the CLECs that if the changes it proposes are defects, they would "probably be assessed as medium-impact defects."[48]

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[46] *See also ex parte* letter from Kathleen B. Levitz (BellSouth) to Marlene H. Dortch in CC Docket No. 02-35, dated May 14, 2002, Attachment at 2 (describing misrouting as an "isolated problem for Georgia").

[47] A copy of the revised user requirements associated with the change request is attached hereto as Attachment 18 . BellSouth has scheduled Change Request 0756 for implementation on August 24-25, 2002, as part of its implementation of Release 10.6. Stacy Aff., ¶ 274.

[48] *See Georgia/Louisiana Order* ¶ 269; BellSouth responses to AT&T Questions Submitted 6-4-02, at 1 (attached hereto as Attachment 19).

73. Most importantly, Change Request 0756 reflects BellSouth's abuse of the CCP. BellSouth classified this request as a regulatory (Type 2) change, citing an order issued by the Mississippi Public Service Commission on September 19, 2000, in MPSC Docket No. 2000-AD-413. Stacy Aff., ¶ 270 & Exh. WNS-46 at 2. That classification enables BellSouth to avoid the requirements of the CCP (including notification requirements) that would govern a "Type 4" (BellSouth-initiated) change request and the requirements of the CCP (including correction intervals) that would govern a "Type 6" (software defect) change request.

74. The MPSC docket that BellSouth cited as the basis for classifying Change Request 0756 as "regulatory," however, involved only a request for an expanded area scope in DeSoto County, Mississippi – not to Georgia, and certainly not to each State in the BellSouth region. Stated otherwise, BellSouth has classified as "regulatory" a request to implement changes in every State in its region to correct a problem that it previously claimed to exist only in Georgia, on the basis of an order issued by regulatory authorities in Mississippi involving a single county in that State. *See* Stacy Aff., ¶ 271 (describing the changes that would be implemented under CR0756).

75. BellSouth's description of the change request as the result of a "regulatory mandate" is thus pure fiction. In reality, BellSouth is simply seeking to make massive corrections to defects in its systems as a result of its improper implementation of the UNE platform. As BellSouth admits, the new USOCs are being introduced in order to clarify the delineation between non-caller ID and caller ID-capable UNE ports and to limit the possibility of service interruptions during conversions to UNE-P service. *Id.* If the USOCs are being introduced for this purpose, however, BellSouth has not explained why they were not originally implemented in 2000, when BellSouth first offered the UNE platform to CLECs. Far from being

the result of a "regulatory mandate," Change Request 0756 is the result of BellSouth's failure to provide correct central office routing instructions and/or codes to support the UNE platform since BellSouth implemented the UNE-P.[49]

76. In addition to its misclassification of Change Request 0756 as a "regulatory" change, BellSouth continues to violate the CCP in its treatment of defect change requests. For example, the CCP requires BellSouth to correct "high impact" change requests within 10 business days, "medium impact" defects within 90 business days, and "low-impact" defects with "best effort," although BellSouth has committed to a 120-day interval. *See Georgia/Louisiana Order*, ¶ 195 n.744. BellSouth has fallen far short of complying with these deadlines. For example, as stated above, a number of defect change requests in the current backlog are already more than 120 days old, but have not even been scheduled for implementation. The majority of the defect change requests that have been scheduled for

[49] The deficiencies that BellSouth seeks to correct through Change Request 0756 are but the latest example of BellSouth's flawed implementation of the UNE platform. For example, although an October 2001 amendment to AT&T's interconnection agreement with BellSouth gave AT&T the right to order DSL for a line splitting arrangement where AT&T provided voice service through the UNE-P, BellSouth did not immediately, and properly, load all associated USOCs and rates to all of its tables to support AT&T's ordering of line splitting. Instead, AT&T's orders for line splitting were rejected on the ground that line splitting was not available under the agreement. Even after BellSouth acknowledged its error and attempted to load the necessary USOCs (which is clearly defined, basic work), its systems still rejected AT&T's line splitting orders. Only on its second loading attempt was BellSouth successful. These problems unnecessarily delayed AT&T's testing efforts and market entry through the UNE platform. BellSouth's flawed implementation of the UNE-P is further manifested by the loss of dial tone experienced by numerous customers served through the UNE-P, due to problems associated with BellSouth's use of a two-order system for UNE-P conversions. *See Georgia/Louisiana Order*, ¶ 167 & n.619. As a result of this loss of dial tone, BellSouth was ordered by the Georgia PSC to implement a single "C" (change) order to replace the two-order system by January 5, 2002. BellSouth, however, did not implement single "C" ordering until March 23, 2002 – and only for four of the nine States in its region.

implementation will be more than 120 days old at the time of implementation – and two of those requests will be 200 and 412 days old.

77. BellSouth's failure to comply with the CCP was recently reconfirmed by KPMG in its third-party testing in Florida. In Exception 123, issued last November, KPMG found that BellSouth was improperly classifying change requests as features, rather than as defects – thereby avoiding the time deadlines imposed by the CCP for resolution of defects. *See* Bradbury/Norris GA/LA Decl., ¶ 193 & Att. 56. Two months ago, KPMG issued an amendment to Exception 123 finding that BellSouth had *again* failed to follow the defect process set forth in the CCP, in connection with "system enhancements" that it had implemented to correct the unexpected manual fall-out of orders that KPMG had noted in its testing. KPMG found that (1) these enhancements should have been classified as defects, (2) BellSouth failed to open Type 6 (defect) change requests for associated with the defects, and (3) BellSouth had failed to adhere to the intervals for validating and opening defects. KPMG concluded that BellSouth's failure to follow the CCP in such situations "may result in the CLECs' inability to efficiently execute transactions with BellSouth, resulting in CLEC customer dissatisfaction."[50]

78. Because of the concerns that it expressed in Exception 123, KPMG found in its Draft Final Report that BellSouth had not satisfied Evaluation Criterion PPR1-6, which reviewed whether "[d]ocumentation regarding proposed changes is distributed on a timely basis." KPMG Draft Final Report at RMI-18 – RMI-20. KPMG found that due to BellSouth's

[50] Amended KPMG Exception 123, dated May 8, 2002, at 4-5 (attached hereto as Attachment 20).

misclassification of change requests as defects, "BellSouth was not providing documentation of system defects." *Id.* at RMI-19.

D. Conclusion

79. BellSouth's CCP remains seriously inadequate. BellSouth continues to have exclusive control over which change requests will be implemented, and when; BellSouth unilaterally decides what capacity information to share with CLECs; BellSouth takes an unreasonably long time to implement change requests; BellSouth's test environment fails to mirror the production environment; and BellSouth continues to disregard the requirements of the CCP. As long as such conditions persist, the CCP will not afford competitors a meaningful opportunity to compete.

80. Thus, before its CCP can be found to comply with Section 271, BellSouth must make additional, substantial revisions in the CCP, including the following:

- First, BellSouth should be required to agree to a specific timetable for implementation of change requests, without attaching conditions to the timetable (such as "subject to capacity constraints"). Type 4 and Type 5 changes should be implemented no later than 60 weeks after prioritization. Only with the approval of the CLECs (or the state regulatory commission) should BellSouth be permitted to deviate from this timeline.

- Second, BellSouth should be required to implement a single prioritization process, in which BellSouth and the CLECs jointly make the final determination as to the prioritization and implementation of change requests. This process would replace the current process, under which BellSouth has a veto power over change requests, treats CLECs' prioritization of change requests as purely informational, and unilaterally makes the final determinations regarding prioritization and implementation in an internal process without CLEC involvement.

- Third, BellSouth should be required to provide complete and accurate information regarding the capacity of its releases, together with information regarding the timing of proposed releases on a rolling basis (for example, for twelve months). This information is critical to CLECs' long-term planning. Currently, BellSouth has agreed to provide complete planning information only for its next scheduled release, and is unwilling to provide historical data or rolling information.

- Fourth, BellSouth should be required to commit to implementing the current backlog of change requests within a specific, reasonable timeframe. Although the above-described 60-week deadline will help to resolve the timing issues on a going-forward basis, BellSouth should be required to complete implementation of the entire backlog within a specific period. AT&T believes that an 18-month time limit should be imposed.

- Fifth, BellSouth should be required to design the CAVE testing environment to mirror the production environment. Thus, BellSouth should be required to allow CLECs to use their own codes (rather than BellSouth's codes) in the testing environment. In addition, BellSouth should be required to implement a "go/no go vote" process which does not condition the right of a CLEC to vote in that process according to whether the CLEC has already tested the release in question prior to its scheduled implementation date.

Most importantly, BellSouth must demonstrate a pattern of compliance with the CCP.

III. BELLSOUTH FAILS TO PROVIDE NONDISCRIMINATORY ACCESS TO ORDERING, PROVISIONING, AND BILLING FUNCTIONS.

81. BellSouth denies CLECs parity of access to ordering, provisioning, and billing functions. For example, despite its promises to improve its flow-through capability, BellSouth continues to place excessive reliance on manual processing. BellSouth also renders poor performance in the areas of service order accuracy, provisioning accuracy, and order status notices. Finally, BellSouth fails to provide complete and accurate billing data to CLECs or resolve billing disputes in a timely manner.

A. Ordering and Provisioning

82. BellSouth denies parity of access to ordering and provisioning functions in three critical respects. First, an unacceptably high percentage of CLEC orders fall out for manual processing due to system design or system errors by BellSouth, in contrast to the near-total flow-through capability of BellSouth's retail operations. Second, BellSouth's errors in

manual processing and the provisioning of CLEC orders deny CLECs a meaningful opportunity to compete. Third, BellSouth fails to provide CLECs with timely, complete, and accurate status notices.

1. BellSouth Continues to Place Excessive Reliance on Manual Processing.

83. BellSouth's retail operations submit electronic orders that are capable of flowing through its systems without manual intervention up to 100 percent of the time, for every service, product, or transaction used in those operations. CLECs need the same capability for the local service requests ("LSRs") that they submit in order to be able to compete effectively with BellSouth. Electronic LSRs are more likely to be processed more quickly, accurately, and at less cost than LSRs that are manually processed by BellSouth. As a result, flow-through provides numerous benefits to consumers, including earlier due dates, a lower risk of errors in provisioning, and ultimately lower prices (due to the lower costs of processing orders on a fully automated basis). By contrast, manual processing of an LSR increases the likelihood of delays and errors in provisioning.

84. In its *Georgia/Louisiana Order*, the Commission found that BellSouth's flow-through rates were adequate, citing (among other things) the establishment of a Flow-Through Task Force ("FTTF") by the Georgia PSC to improve BellSouth's flow-through capability and BellSouth's implementation of additional flow-through improvements – including "ten more improvements to BellSouth's OSS that are targeted for implementation in May." *Georgia/Louisiana Order*, ¶ 146. The Commission made clear that its finding of current adequate flow-through capability was based on its expectation of improved performance in the future:

> While we find that BellSouth's OSS currently provides competing carriers with a meaningful opportunity to compete, we expect that BellSouth will continue to improve its flow-through performance, work with competitive CLECs in workshops, and make requested improvements through the change management process. We note that we will monitor BellSouth's compliance with its commitment to improve its flow-through performance. Deterioration in BellSouth's performance could result in enforcement action.

Id.

85. BellSouth's flow-through performance, however, has shown no improvement since December 2001 (the most recent month of data on which BellSouth relied when it filed its second application for Georgia and Louisiana) or even since January 2001. Although BellSouth claims that its flow-through performance "has remained constant or has improved" (Application at 84), its performance – at best – has remained stagnant.

86. When all of the monthly flow-through rates for 2001 and for 2002 to date are examined, it is clear that the flow-through rates cited by BellSouth in its application (the "Percent Flow-Through Rates") have shown no, or little, improvement this year. *See* Application at 84. For residential resale orders, the CLEC flow-through rate in May 2002 (86.7 percent) was *lower* than that in December (89.5 percent) and in January 2001 (91.35 percent). For UNE LSRs, the flow-through rate of 82.6 percent in May 2002 was only slightly higher than the January 2001 rate of 80.89 percent, and below the rate of 85.5 percent in January 2002. For business resale orders, the May 2002 rate of 69.5 percent was lower than the December 2001 rate of 74.07 percent.[51] In addition, *none* of the May 2002 flow-through rates cited by BellSouth met

[51] The Percent Flow-Through rate for business resale orders has declined each month since February 2002, when it reached a "record" level of 75 percent.

the applicable benchmarks set by the PSCs in its region – 95 percent for residential resale orders, 90 percent for business resale orders, and 85 percent for UNE orders.[52] Finally, for LNP orders, the Percent Flow-Through Rate was only 89.8 percent in May – the lowest since December 2001.[53]

87. BellSouth's performance has been equally deficient over the long term. During the last 16 months for which it has reported data, the Percent Flow-Through Rates for residential and business resale orders have *never* met their respective benchmarks. Only in one month (January 2002) did BellSouth's Percent Flow-Through rate for UNE orders meet the applicable benchmark of 85 percent.

88. Even if they showed an improvement in performance (and they do not), the Percent Flow-Through Rates are not the best measure of BellSouth's flow-through performance. The "Percent Flow-Through Rate" does not meet the Commission's requirement that flow-through be measured by considering only those manually processed orders that fall out either because of BellSouth's failure to design those orders to flow through or because of errors in BellSouth's system design. Only the "Achieved Flow-Through Rate" reported by BellSouth meets that requirement, because it includes orders that fall out due to BellSouth system design or

[52] Similarly, the aggregate "Percent Flow-Through Rate" of 84.5 percent in May 2002 was lower than the 87 percent rate for December 2001, and the 88.57 percent rate for January 2001. Tables describing the flow-through rates (both "Percent Flow-Through" and "Achieved") from April 2001 through May 2002, which are based on Exhibit WNS-47 to Mr. Stacy's affidavit, are attached hereto as Attachment 21.

[53] These Percent Flow-Through rates are regionwide data. However, as Attachment 22 demonstrates, the Percent Flow-Through rates for each individual State in the BellSouth region confirm that almost half of the category-specific Flow-Through rates have either remained constant or have declined between November 2001 and April 2002.

system error in the flow-through calculation, and excludes all manual fall-out due to errors made by CLECs on their LSRs. *See* Bradbury Opening GA/LA Decl., ¶¶ 78-80. By contrast, the calculation of the Percent Flow-Through Rate measure excludes CLEC orders that BellSouth has not designed to flow through – which constitute a substantial percentage of electronically-submitted LSRs. For example, on a regional basis the Percent Flow-Through rate for business resale orders is typically 21 or 22 percent higher than the Achieved Flow-Through rate for business resale orders – meaning that 21 or 22 percent of such orders have not been designed to flow through. This percentage of manually processed orders "by design" generally has exceeded 30 percent for LNP orders, and 12 percent for UNE orders.

89. The Commission stated in its *Georgia/Louisiana Order* that the Achieved Flow-Through Rate "includes competitive CLEC error, whereas the [Percent Flow-Through] rate does not." *Georgia/Louisiana Order,* ¶ 143 n.507. That is incorrect. Mr. Stacy's testimony in that proceeding showed that *both* rates exclude orders that fall out due to CLEC errors. *See* Exhibit OSS-62 to Affidavit of William N. Stacy in CC Docket No. 01-277 (attached hereto as Attachment 23).

90. Like its Percent Flow-Through Rates, BellSouth's Achieved Flow-Through Rates have not shown improvement during 2002. The aggregate Achieved Flow-through Rate was 76.6 percent in May 2002 – a decline from the rate of 79.54 percent in January 2001. For resale residential orders, the May 2002 Achieved Flow-Through rate of 79.9 percent was lower than the January 2001 rate of 85.70 percent. For business resale orders, the Achieved Flow-Through Rate declined from 52.52 percent in December to 51.6 percent in May 2002 – and the May 2002 rate was lower than the highest monthly rate of 2001 (52.81 percent, for August). Finally, the Achieved Flow-Through Rate for UNEs increased from 68.10 percent in December

2001 to 75.30 percent in January 2002, but has remained stagnant ever since; the rate declined in February and March, and was 74.1 percent in May 2002, which is still below the January 2002 rate.[54]

91. In short, the percentage of electronically submitted orders that fall out for manual processing by BellSouth has not improved during 2002. In May 2002, for example, 19.97 percent of LSRs fell out for manual processing due to BellSouth design or system error. That rate is no improvement over the rates for January 2002 or the preceding months in 2001. *See* Bradbury Opening GA/LA Decl., ¶ 83; Bradbury/Norris GA/LA Decl., ¶ 102; Attachment 24 hereto.[55]

92. As in the past, BellSouth attempts to attribute the low levels of its flow-through rates to errors made by CLECs in submitting LSRs, citing the high flow-through rates achieved by certain CLECs. *See* Application at 84-85; Stacy Aff., ¶ 285. That explanation, however, is baseless. As previously stated, both of BellSouth's reported flow-through rates (Achieved Flow-Through and Percent Flow-Through) *exclude* orders due to CLEC errors. Thus,

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[54] *See* Attachment 21 hereto. Even BellSouth's own comparison of flow-through rates shows no improvement in its performance. *See* Stacy Aff., ¶ 283 & Exh. WNS-47. For example, the flow-through table in Mr. Stacy's affidavit shows that, with the exception of the Achieved Flow-Through rate for LNP, the Achieved Flow-Through Rates and Percent Flow-Through Rates for each of the seven categories were *lower* in March 2002 than in January 2002. *Id.*, ¶ 283. This decline is all the more striking because, contrary to BellSouth's suggestion, the volumes in all but two of these categories were lower in March than in January (and, in those two categories where volumes increased, the March rates were lower than those in January). *Id.* Similarly, Mr. Stacy's Exhibit WNS-47 shows that aggregate and residential flow-through rates (both Achieved and Percent Flow-Through) were lower in March 2002 than in April 2001. *Id.*, Exh. WNS-47.

[55] The chart attached hereto as Attachment 24 demonstrates that the rates of manual fall-out due to BellSouth system design or system error have not improved, and that the rate of manual fall-out due to "CLEC error" has remained constant, during 2002.

to the extent that flow-through rates differ among CLECs, that difference is due to BellSouth's failure to design certain order types to flow through or to errors in BellSouth's systems. Those causes are matters attributable solely to BellSouth, and cannot be affected by any decision of the CLECs – as illustrated in Attachment 25 hereto.[56] Furthermore, the Percent Flow-Through Rates on which BellSouth relies exclude manual fall-out due to system design; as a result, BellSouth cannot blame the levels of those rates on the CLECs' "business model or market entry methods." Stacy Aff., ¶ 60.[57]

[56] Attachment 25 uses an example of a CLEC receiving poor reported flow-through performance and having a high input error rate, which (1) reduces its input error rate, or (2) benefits from a reduction in BellSouth's designed manual fallout. The corollary is also true: a CLEC receiving high reported flow-through performance cannot impact (reduce) the reported flow-through rate by increasing its input error rate or experiencing a higher designed manual fall-out rate.

[57] BellSouth characterizes as a "flow-through issue rather than a due date calculation error" the identification of 3,375 BellSouth-caused errors on its March 2002 Flow-Through Error Analysis Report under Code 9685 ("Due Date Could Not Be Calculated"). Stacy Aff., ¶ 230; *see also* Application at 80 n.45. The explanation that BellSouth offers for this problem, however, is inconsistent with the explanation which it gave to the Commission in the *Georgia/Louisiana* proceeding. *See Georgia/Louisiana Order*, ¶ 134 ("this error message is returned when the competitive LEC order includes an invalid address, when the competitive LEC requests a due date in excess of one year from the date of submission, or prior to he date of submission," as well as planned manual fallout for orders such as those requesting more than 15 lines). In addition, BellSouth's current explanation is illogical. Although BellSouth asserts that its due date calculator "is operating properly," it acknowledges that the errors occur because the calculator is not designed to recognize certain recent values, causing orders with those values to fall out for manual processing. *Id.* A properly designed due date calculator, however, *would* recognize such values. BellSouth's explanation also makes clear that it did not conduct adequate internal testing prior to inclusion of the new values in its user requirements, since such testing would likely have uncovered the problem prior to implementation – not after AT&T raised the issue. *See* Stacy Aff., ¶ 229. Although BellSouth attempts to minimize the significance of the problem by asserting that the 3,375 errors represent less than one percent of electronically submitted orders (*id.*, ¶ 231), those errors account for nearly 8 percent of all BellSouth system errors in March 2002 – the largest of any of the specially identified BellSouth errors in that report and 100 percent of all orders where the dedicated inside plant is integrated. *Id.*, ¶ 232. The latter category, moreover, encompasses orders for coordinated cutovers ("hot cuts") that involve IDLC

93. This lack of improvement in flow-through rates is not surprising, because BellSouth has not kept its commitment to this Commission to improve its performance. For example, although BellSouth represented to this Commission that it had implemented eight additional flow-through improvement features in February and March 2002, with "ten more improvements . . . targeted for May" (*Georgia/Louisiana Order*, ¶ 146), BellSouth has implemented only *seven* such features thus far in 2002.[58] BellSouth's release schedule calls for the implementation of only six additional flow-through improvements during the remainder of 2002.[59] Even if BellSouth implements those improvements as scheduled, it will have implemented a total of only 13 FTTF improvements during all of 2002 – little more than two-thirds of the amount that BellSouth had previously promised to implement between February and May 2002 alone.

94. BellSouth's claims that it has implemented 31 flow-through improvement items "as a result of the FTTF" is a gross overstatement. *See* Application at 86; Stacy Aff., ¶ 287 & Exh. WNS-49. BellSouth includes in its calculations change requests that did not originate in the FTTF, change requests to correct defects, and implementations not supported by

– and BellSouth has acknowledged that such orders constitute between 20 and 50 percent of all hot cut orders in the majority of States in its region. *See* BellSouth Supplemental Response to Coordinated CLEC First Data Requests, Item 16, dated July 2, 2002, in Tennessee Regulatory Authority Docket No. 97-00309.

[58] *See* Attachment 26 hereto; Stacy Aff., Exh. WNS-49 (stating that, to date, BellSouth has implemented FTTF-01, FTTF-14, FTTF-17, FTTF-15, FTTF-24, and FTTF-26 in 2002).

[59] Attachment 26 hereto used the change requests for flow-through improvements filed under the CCP to calculate the number of such improvements that have been, or are scheduled to be,

any change request. *See* Application at 86; Stacy Aff., ¶ 287 (stating that 31 items include "flow-through improvement features, errors and defects that have already been implemented"). In fact, BellSouth calculated the 31 items by counting the same change request (CR0739) nine times. Moreover, of the 31 items (including CR0739), 14 are described by BellSouth as correcting errors in BellSouth's SOER or SOCS systems. *Id.*, Exh. WNS-49. Finally, even if BellSouth's count could somehow be regarded as accurate, the 31 "items" that it lists have produced no improvement in the flow-through rates, as described above.[60]

95. KPMG has confirmed in its third-party test in Florida that BellSouth's flow-through performance is inadequate. In its Draft Final Report, KPMG found that even after two retests, less than 75 percent of UNE orders that were expected to flow through actually flowed through – which was well below the 85 percent benchmark. Therefore, KPMG concluded that BellSouth had not satisfied KPMG's criterion that "BellSouth's systems process UNE order transactions in accordance with published flow-through rules." KPMG Draft Final Report at POP-272 – POP-273 (Evaluation Criterion TVV3-2). KPMG further found that

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implemented in 2002. To the extent that BellSouth claims that it implemented (or plans to implement) additional improvements, it has done so outside the change control process.

[60] On July 9, 2002, the Florida PSC, noting BellSouth's failure to achieve the applicable benchmarks for Percent Flow-Through Rates, adopted its Staff's recommendation that BellSouth be required to develop and implement an action plan designed to improve its flow-through performance to achieve the benchmarks. *See* Issue 1 of the June 27, 2002, FPSC Staff Recommendation attached hereto as Attachment 11. The FPSC revised its Staff's recommendation only as to the deadline by which BellSouth must achieve benchmark performance. The FPSC directed BellSouth to submit its action plan by July 30, 2002, and to state in that plan the date it was targeting to achieve benchmark performance. The FPSC reserved the right to direct BellSouth to achieve benchmark performance at a date earlier than that which BellSouth describes in its proposed action plan.

BellSouth had not satisfied the similar evaluation criterion involving local number portability ("LNP") orders.[61]

2. BellSouth Has Rendered Poor Performance In the Areas of Service Order Accuracy and Provisioning Accuracy.

96. The adverse consequences to CLECs of BellSouth's excessive reliance on manual processing are reflected by its poor performance in the areas of service order accuracy and provisioning accuracy. BellSouth's assertion that its performance in the area of service order accuracy is "strong" is belied by its own reported data – which are based on a methodology that BellSouth unilaterally developed without input from the CLECS. *See* Application at 5; *Georgia/Louisiana Order,* ¶ 159 n.575.[62]

97. BellSouth acknowledges, for example, that for the three-month period from January 2002 to March 2002, it satisfied the applicable 95 percent benchmark for service order accuracy for less than half of the 32 resale sub-metrics for which it reported data during that period. Ainsworth Aff., ¶ 215. In April 2002, BellSouth failed to meet the 95 percent benchmark for 5 of the 9 resale sub-metrics for which it reported data. For resale orders involving more than ten circuits and requiring a dispatch, the service order accuracy rate was

[61] *See* KPMG Draft Final Report at POP-275 – POP-276 (finding that BellSouth failed to satisfy Evaluation Criterion TVV3-4 – whether "BellSouth systems process LNP order transactions in accordance with published flow-through rules" – because, on retesting, only 82.35 percent of LNP orders expected to flow through actually flowed through, short of the 85 percent SQM standard).

[62] BellSouth's poor rate of service order accuracy is confirmed on the "attestation" of the "regionality" of its OSS by Price Waterhouse Coopers ("PWC"). PWC found that approximately 20 percent of the CLEC orders that were manually processed by BellSouth's Local Carrier Service Center "experienced downstream system edit errors." Stacy Aff., ¶ 76 & Exhs. WNS-11 at 4, WNS-12 at 4.

only 77.78 percent for business customers, and 88.24 percent for residential customers. Varner Aff., Exh. PM-4. Similarly, for UNE orders involving ten circuits and requiring a dispatch, BellSouth's reported service order accuracy rate was only 89.81 percent. *Id.*[63]

98. BellSouth's service order accuracy performance was equally deficient in May 2002. During that month, BellSouth failed to meet the 95 percent benchmark for 7 of the 11 resale sub-metrics, and for one for the six UNE sub-metrics, for which it reported data. The service order accuracy rates were only 67.07 percent for UNE design orders (specials) involving fewer than 10 circuits and requiring no dispatch, 77.78 percent for business resale orders involving more than 10 circuits and requiring a dispatch, and 88.82 percent for business resale orders involving fewer than 10 circuits and requiring a dispatch.[64]

99. The errors committed by BellSouth in manual processing can, and do, result in incorrect provisioning of orders by BellSouth. In its recent Draft Final Report on the third-party testing in Florida, KPMG concluded that BellSouth did not accurately provision CLEC orders in important respects – and did not satisfy significant test criteria relating to provisioning accuracy. KPMG found that BellSouth had not satisfied its test criteria that "switch

[63] BellSouth contends that the overall service order accuracy rate for April was 97.13 percent for "mechanized orders," and 92.19 percent for "non-mechanized orders." Varner Aff., ¶ 184. It is unclear from BellSouth's Application whether the "non-mechanized orders" in its calculations include both manually submitted orders and partially mechanized orders. In a March 1, 2002 *ex parte* in the *Georgia/Louisiana* proceeding, BellSouth stated that the service order accuracy rates for "non-mechanized orders" which it was submitting therein encompassed both categories of orders. Even if the April 2002 rate for "non-mechanized orders" encompasses only manually submitted orders, however, a 92.19 accuracy rate is unacceptable, since it means that nearly 10 percent of CLEC orders are not accurately entered into BellSouth's systems by its Local Carrier Service Center.

[64] *See, e.g.*, BellSouth Monthly State Summary for Georgia, May 2002, at 9-10, 38.

translations contain required field inputs," and that "BellSouth provisioned switch translations and updated customer service records in accordance with the submitted LSRs." KPMG Draft Final Report at Provisioning-58 – Provisioning-59 (Evaluation Criterion TVV4-3), Provisioning-71 – Provisioning-72 (Evaluation Criterion TVV4-29). Even on KPMG's retest, BellSouth did not accurately update switch transactions and CSRs on more than 20 percent of the orders that KPMG tested. *Id.* at Provisioning-72.

100. KPMG found that BellSouth's provisioning accuracy rate was similarly deficient with respect to directory listings. KPMG concluded that BellSouth did not satisfy two evaluation criteria: (1) whether 'BellSouth's directory assistance database contains required field inputs"; and (2) whether "BellSouth provisioned directory listings and updated the customer service records in accordance with the submitted LSRs." *Id.* at Provisioning-15 – Provisioning-17 and Provisioning-72 – Provisioning-73 (Evaluation Criteria TVV4-3 and TVV4-29). Even on the second retest conducted by KPMG, BellSouth provisioned 20 percent of orders inaccurately – far short of the 95 percent benchmark. *Id.*

101. BellSouth's substandard performance in accurately provisioning orders is further confirmed by AT&T's own experience. AT&T's customers continue to experience service interruptions when they convert to UNE-P service. Because this conversion is merely a software change, however, there should be no disruption in the customer's service. BellSouth initially indicated that this loss of service occurred because of BellSouth's use of a new ("N") order and a separate disconnect ("D") order to provision UNE-P. When BellSouth implemented the disconnect order before working the new order, the customer's service was interrupted.

102. BellSouth promised that this problem would be resolved through the implementation of a "Single C" (change) order to replace the "N" and "D" orders. *See*

Georgia/Louisiana Order, ¶ 167. BellSouth implemented the "Single C" order in four States on March 23, 2002. However, even in those States, customers are still losing service. After repeated questioning by AT&T, BellSouth stated in its June 26, 2002 monthly executive meeting with AT&T that the service outages were caused by errors by BellSouth representatives and by changing the facility to which the customer is assigned.

103. BellSouth's explanation that the problem is due (at least in part) to a change in facilities the problem is illogical. There is no reason why BellSouth should be changing the facility to which the customer is assigned when the customer converts to UNE-P service, since the conversion is simply a software change. But regardless of whether BellSouth's explanation is correct, the loss of service is plainly due to errors in provisioning by BellSouth.[65]

3. BellSouth Has Not Met Its Obligation To Return Timely, Complete, and Accurate Order Status Notices.

104. Whether a BOC has provided CLECs with timely, complete, and accurate status notices is critical to a CLEC's ability to compete – and an important factor in determining whether the BOC is in compliance with Section 271. *Georgia/Louisiana Order*, App. D, ¶ 36; *Second Louisiana Order*, ¶ 117. BellSouth, however, has not shown that it provides timely, complete, and accurate status notices to CLECs.

[65] Contrary to BellSouth's assertion, the inclusion of its service order accuracy measure in its "SEEMS" penalty plans will not "ensure that BellSouth continues to provide CLECs with accurate orders." Application at 87. Payments will be based on only $50.00 "per affected occurrence." Ainsworth Aff., ¶ 217. Such an amount is patently inadequate, because it enables BellSouth to pay paltry penalties, particularly since CLEC transaction volumes are low (and BellSouth will be required to pay penalties on the percentage of orders within a particular sub-metric that represent the difference between its actual service order accuracy rate and the 95 percent benchmark). Thus, BellSouth will have no incentive to meet the applicable 95 percent benchmark.

105. First, BellSouth still does not provide timely firm order confirmations ("FOCs") or rejection notices for electronically submitted LSRs that fall out for manual processing. On average, it takes BellSouth 18 hours to return a FOC or rejection notice for such "partially mechanized" orders. By contrast, BellSouth takes an average of only 15 minutes to return a FOC or rejection notice when the order is processed electronically. As a result of the 18-hour delay in the return of FOCs and rejection notices on partially mechanized, CLECs seeking to ascertain the status of the order must contact BellSouth's Local Service Center – expending time and resources in the process. Moreover, because BellSouth does not assign a due date for an LSR until it returns the FOC, the 18-hour delay may result in the assignment of later due dates for customers whose LSRs are manually processed than for BellSouth's retail customers. Similarly, if the partially mechanized order is rejected, the 18-hour return time will delay the resubmission of the LSR and the provisioning of the order.[66]

106. Second, BellSouth provides inconsistent and incomplete information on its status notices. In Exception 165, which was issued on May 16, 2002, KPMG found that 17 percent of the clarification responses (responses that BellSouth sends when a CLEC's LSR is incomplete or incorrect) that it had reviewed were inaccurate. KPMG found that erroneous clarification responses "may require CLECs to utilize additional resources to verify order

[66] In its third-party OSS testing in Florida, KPMG found that BellSouth has also failed to return timely manual rejection notices in response to manually submitted (non-mechanized) orders. Thus, in its Draft Final Report KPMG found that BellSouth had "not satisfied" Evaluation Criterion TVV1-3-16, which examined whether "BellSouth's manual order process provides reject (REJ) responses within the agreed upon standard interval." BellSouth failed to meet the applicable benchmark that 85 percent of such notices be received within 24 hours. *See* KPMG Draft Final Report at POP-85 – POP-86.

information before successfully processing individual customer orders," and "may result in Missed Appointments and rescheduled orders, decreasing CLEC customer satisfaction."[67] As a result, KPMG's Draft Final Report concluded that "BellSouth's system or representatives do not provide accurate and complete ERR CLR messages" – and therefore BellSouth did not satisfy the applicable test criterion regarding the accuracy and completeness of such messages.[68]

107. Commercial experience confirms KPMG's finding that BellSouth's rejection notices are incomplete. CLECs often experience what is referred to as "serial clarification." When BellSouth manually processes a local service request (either because the LSR was manually submitted or because the LSR fell out for manual processing after being electronically submitted), and the BellSouth representative determines that the order should be rejected, the representative is supposed to identify all errors on the LSR and list *all* such errors on the rejection notice. Often, however, the LCSC representative lists only a single error on the rejection notice, even when the LSR actually contained at least two errors. Under such circumstances, the CLEC will resubmit the order, only to find it rejected again because of an error not identified on the rejection notice. If there were more than two errors on the original LSR, the resubmissions (and rejections) will continue. Although BellSouth has conducted retraining of its LCSC a number of times over the years, these serial clarifications still occur at an unreasonably high rate.

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[67] KPMG Exception 165, dated May 16, 2002 (attached hereto as Attachment 27).

[68] KPMG Draft Final Report at POP-66 – POP-67 (Evaluation Criterion TVV1-2-2). KPMG's finding that the BellSouth status notices are not timely or complete is confirmed by AT&T's experience. During AT&T's testing of the UNE platform with BellSouth in 2000, such notices had an error rate of 14 percent.

B. Billing

108. In the *Georgia/Louisiana Order*, the Commission stated that, as part of its obligation to provide nondiscriminatory access to its OSS, "BellSouth must provide competing carriers with complete and accurate reports on the service usage of competing carriers' customers in substantially the same time and manner that BellSouth provides such information to itself, and wholesale bills in a manner that gives competing carriers a meaningful opportunity to compete." *Georgia/Louisiana Order*, ¶ 173.[69] BellSouth, however, has not done so.

109. The daily usage files and wholesale bills that AT&T has received from BellSouth contain numerous errors. For example, BellSouth has billed AT&T several hundred thousand dollars for originating switching charges even when the traffic originates on AT&T's switch; BellSouth is billing AT&T monthly for one-time charges associated with collocations; BellSouth has failed to bill AT&T for local minutes of use for a six-month period; BellSouth sends AT&T bills on new accounts that erroneously list past due balances; and BellSouth sends *retail* bills to AT&T. In addition, BellSouth has assessed late payment charges against AT&T when payment on bills was not overdue as defined in the parties' interconnection agreement.

110. BellSouth's billing errors are compounded by its lack of responsiveness. Each time AT&T receives errors on its bills, it contacts BellSouth and attempts to resolve the problem through mutual collaboration (rather than through litigation). Under the interconnection agreement between BellSouth and AT&T, BellSouth is required to resolve a claim of billing

[69] *See also Massachusetts 271 Order*, ¶ 97; *New York 271 Order*, ¶ 226.

problems within 60 days after receiving the claim from AT&T. However, BellSouth has failed to resolve billing problems in a timely manner.

111. Many of AT&T's billing problems with BellSouth are unresolved even though AT&T first filed claims raising them six or more months ago. For example, AT&T first raised the issue of BellSouth's erroneous assessment of late payment charges in August 2001, and the issue of BellSouth's erroneous billing of originating usage in December 2001. BellSouth, however, did not even provide a response to these claims until June 2002. Such behavior, unfortunately, is typical of BellSouth. BellSouth did not provide any written response to at least 12 of the 23 claims that AT&T filed between February 2001 and March 2002 until more than 30 days after their submission.[70]

112. In AT&T's experience, BellSouth's lack of responsiveness to billing problems is the worst of any RBOC. The frequent billing errors by BellSouth, together with the failure of BellSouth to address them in a timely manner, severely impairs a CLEC's ability to provide timely and accurate bills to its customers. In such circumstances, a CLEC does not have a meaningful opportunity to compete.

IV. KPMG'S THIRD-PARTY TESTING IN FLORIDA DEMONSTRATES THAT BELLSOUTH IS NOT PROVIDING NONDISCRIMINATORY ACCESS TO ITS OSS.

113. The third-party testing conducted by KPMG in Florida provides further confirmation that BellSouth does not provide nondiscriminatory access to its OSS. KPMG has

[70] *See* the list of AT&T's billing issues set forth in confidential Attachment 28 hereto. AT&T typically files single claims involving the same billing error that has occurred over a period of multiple months.

found numerous deficiencies in the OSS that deny parity of access, and a meaningful opportunity to compete, to CLECs. As previously described, in its Draft Final Report KPMG found that BellSouth had not satisfied a number of its evaluation criteria:

- Whether the change management process has a framework to evaluate, categorize, and prioritize proposed changes. (Evaluation Criterion PPR1-3)
- Whether the change management process includes procedures for allowing input from all interested parties. (Evaluation Criterion PPR1-4)
- Whether documentation regarding proposed changes is distributed on a timely basis. (Evaluation Criterion PPR1-6)
- Whether criteria are defined for prioritizing and assigning severity codes to change requests. (Evaluation Criterion PPR1-8)
- Whether BellSouth has a software/interface methodology that addresses requirements and specification definition, design, development, testing, and implementation. (Evaluation Criterion PPR5-2)
- Whether interface development methodology has a defined a quality assurance process. (Evaluation Criterion PPR5-3)
- Whether a software and interface development methodology exists that defines the process for release management and control. (Evaluation Criterion PPR5-17)
- Whether BellSouth's systems or representatives provide accurate and complete error and clarification messages. (Evaluation Criterion TVV1-2-2)
- Whether BellSouth's manual ordering process provides reject responses within the agreed-upon standard interval. (Evaluation Criterion TVV1-3-16)
- Whether BellSouth's systems process UNE order transactions in accordance with published flow-through rules. (Evaluation Criterion TVV3-2)
- Whether BellSouth's systems process LNP order transactions in accordance with published flow-through rules. (Evaluation Criterion TVV3-4)
- Whether BellSouth's directory listing database contains required field inputs. (Evaluation Criterion TVV4-1)

- Whether BellSouth provisioned directory listings and updated the customer service records in accordance with the submitted LSRs. (Evaluation Criterion TVV4-29)

- Whether BellSouth's switch translations contain required field inputs. (Evaluation Criterion TVV4-3)

- Whether BellSouth provisioned switch translations and updated customer service records in accordance with the submitted LSRs. (Evaluation Criterion TVV4-28)

114. These deficiencies involve change management, pre-ordering, ordering, and provisioning – each of which is critical to a CLEC's ability to compete. KPMG recognized that fact in concluding that, in each of these OSS areas, "significant issues remain unresolved" as a result of BellSouth's failure to satisfy the evaluation criteria. KPMG Draft Final Report at RMI-22, RMI-105, POP-139, POP-278, Provisioning-78.[71]

115. KPMG has not yet completed certain portions of its testing. A Final Report encompassing the entire OSS test (except for Metrics) will be submitted by KPMG on July 30, 2002. As indicated by the "not satisfied" findings in its Draft Final Report, however, a number of exceptions and observations issued by KPMG have not been resolved. As of July 10, 2002, 27 exceptions and 15 observations remained open. Fourteen of these exceptions, and seven of the observations, directly involve the OSS, while the remainder involve performance measures. *See* Attachment 29 hereto. Given the large current number of open OSS-related

[71] KPMG also stated in its Draft Final Report that although BellSouth had satisfied all 100 of its evaluation criteria for maintenance and repair functions at the time of its data collection, KPMG was unable to assess the current performance of the underlying systems or processes associated with 52 of those criteria, "as a result [of] the passage of time since data collection." KPMG Draft Final Report at EX-11.

exceptions and observations, it is likely that KPMG will not have closed all of them even by the time it completes the remaining testing in late July.

116. The relevant pages of the KPMG Draft Final Report finding that BellSouth had "not satisfied" certain criteria are attached hereto as Attachment 30. A table showing the exceptions and observations still open in the KPMG test is attached hereto as Attachment 29. In view of the deficiencies found in KPMG's Draft Final Report, and in the outstanding exceptions and observations, BellSouth cannot reasonably be found to be in compliance with its OSS obligations.

117. BellSouth suggests that the results of the Florida test are not relevant because they fail to indicate a systemic problem with the OSS. *See* Application at 69-70 n.39; Stacy Aff., ¶ 325 (citing *Georgia/Louisiana Order,* ¶ 109). This argument misses the mark. At least some of the flaws in the OSS identified in the Florida test involve aspects of the OSS (such as change management) that are indisputably regionwide. Moreover, BellSouth's criticism of the Florida test is inconsistent with its reliance on the OSS testing that KPMG conducted in Georgia. *See* Application at 67-69; Stacy Aff., ¶¶ 31-38. If the relevance of test results depends on whether they are "systemic," the Georgia test is equally irrelevant, because (as described below) BellSouth has not shown that its OSS are the same in each of the States in its region. In any event, as AT&T has previously shown, the Georgia test not only was incomplete, but (for all of its flaws) revealed poor performance by BellSouth.[72]

[72] *See* Declaration of Sharon Norris submitted in CC Docket No. 01-277 (attached hereto as Attachment 31).

V. BELLSOUTH'S "REGIONALITY" ARGUMENT

118. Relying on the *Georgia/Louisiana Order,* BellSouth asserts that it uses essentially the same OSS throughout its entire region, and that it may therefore rely on performance in other States in its region, and the KPMG third-party testing in Georgia, to support its application for Alabama, Kentucky, Mississippi, North Carolina, and South Carolina. Application at 1-2, 60-62. This argument is without merit.

119. In the first place, BellSouth's reliance on the *Georgia/Louisiana Order* is misplaced. There, the Commission found only that the "OSS in Georgia are substantially the same as the OSS in Louisiana." *Georgia/Louisiana Order*, ¶ 111. *See also id.*, ¶ 110 (finding that BellSouth had "provide[d] sufficient evidence that its electronic processes are the same in Georgia and Louisiana"). The Commission emphasized that its analysis was focused "on the OSS as it functions in Georgia and Louisiana." *Id.*, ¶ 106. Thus, the *Order* made no finding that the OSS are "the same" in every State in the BellSouth region.

120. BellSouth has not shown that the OSS are essentially the same throughout its region – much less in the five States at issue here. The Commission has previously recognized that similar processes should produce similar performance. *See Kansas/Oklahoma Order,* ¶ 113. Yet BellSouth concedes in its application that the performance of its systems *does* differ from State to State. Heartley Aff., ¶ 5. Given that variation in performance, BellSouth cannot sustain its claim of regionality.

121. BellSouth attempts to excuse the State-to-State variation in performance as the result of factors beyond its control, such as natural disasters, market conditions, and geography. *Id.*, ¶¶ 4, 32-37. These events, however, are the exception, not the rule. BellSouth has more control over its systems (both automated and manual), and its State-to-State

performance, than it suggests. For example, as described below, BellSouth implemented the single "C" (change) order system in four States of its region in March 2002, but still has not done so in the other five States. With respect to its manual processes, BellSouth controls the staffing levels of its various groups, including the levels of its network operations groups and the Local Carrier Service Centers that perform manual processing of CLEC orders.

122. BellSouth has made no attempt to quantify the extent to which its performance differs from State to State, or demonstrate that such differences are caused by factors beyond its control. Instead, BellSouth repeatedly makes generalized assertions that its OSS are the same throughout its region, without providing any basis for its conclusion. These contentions are simply insufficient to show that the BellSouth OSS are the same in each State.

123. It is precisely for these reasons that the Directors of the Tennessee Regulatory Authority ("TRA"), by a majority vote, determined at a Directors' Conference on May 21 that BellSouth's OSS are *not* regional.[73] Director Malone of the TRA, using BellSouth's own definition of "regionality," found that in instance after instance, BellSouth had failed to demonstrate that particular systems (both automated and manual) in the OSS were "regional" – and, with respect to many of these systems, BellSouth had provided no basis for its claim of "regionality" at all. TRA Tr. at 30-41. Director Malone also cited the absence of any evidence that the performance of the OSS was similar from State to State: "[A]ny meaningful measure, in my opinion, must produce comparable results. Anything less does nothing to support an

[73] *See* Tennessee Regulatory Authority, Transcript of Directors' Conference held May 21, 2002, at 30-54 ("TRA Tr."). A copy of the transcript is attached hereto as Attachment 32.

extrapolation of nondiscrimination in providing network access through a showing of regionality." *Id.* at 39-40.

124. Director Greer of the TRA, in addition to agreeing with Director Malone's analysis, cited the substantial variation in flow-through rates from State to State for orders for local number portability ("LNP") as proof that BellSouth's OSS are not regionwide. TRA Tr. at 41-50. Director Greer found that "there is a great deal of variation in the numbers across time and states and regions." *Id.* at 44. Because LNP orders have little "associated product variation" and should not vary depending on weather conditions, the explanations generally given by BellSouth for variations in flow-through rates between States (differences in order mixes and weather conditions) could not explain the State-to-State variation in the LNP flow-through rates. TRA Tr. at 44-45. Applying a regression analysis, Director Greer concluded that the variation in these rates refuted any notion that the OSS were regionwide:

> The ordinary least squares regression results on page 5 show that, statistically speaking, relative to its LNP percent flow through performance in Tennessee, BellSouth's performance is about 20 percent better in Georgia and 16 percent better in Florida. It is also about 20 percent better in Kentucky, but it is about 9 percent worse in Alabama and 28 percent worse in Mississippi. Meanwhile, BellSouth's performance in Louisiana and the Carolinas is not statistically different from its performance in Tennessee.
>
> Thus, for at least the first ten months of 2001, the regression analysis shows that BellSouth's performance in Tennessee is relatively worse in states conducting testing, but compared to the other states, BellSouth's performance is somewhat better, somewhat worse and sometimes not different.
>
> * * *
>
> According to my analysis, the disparities in BellSouth's performance in Georgia, Florida, and Tennessee, for example, do not happen by chance. These disparities are so large – excuse me – are large in magnitude and statistical significance.

TRA Tr. at 49.

125. On June 21, 2002, the TRA issued a formal decision adopting the reasoning of Directors Malone and Greer and concluding that "BellSouth failed to satisfy its burden of establishing that its pre-ordering, ordering, provisioning, maintenance and repair and billing systems are regional."[74] As in the May 21 Directors' Conference, the majority of the TRA concluded in the June 21 Order that: (1) BellSouth had not proved that its OSS were regional; and (2) BellSouth's State-by-State data on local number portability orders "revealed statistically significant disparities . . . across BellSouth's nine-State region which show that the pre-ordering and ordering components of BellSouth's OSS are not regional, even under BellSouth's own definition of regionality."[75]

126. BellSouth describes the TRA's decision as that of a "single Director" who used a "mathematically incorrect" approach of "averaging percentages" and a "fundamentally incorrect assumption" that the types, complexity, and volumes of LNP orders are identical from State to State. *See* Application at 66 n.38; Stacy Aff., ¶¶ 55-60. This is a total distortion of the facts. In the first place, the TRA's decision is that of a majority of its members, not the opinion of a "single Director" – and that decision was based not merely on a disparity in flow-through rates among States, but also on BellSouth's failure to prove the "regionality" of its OSS.

[74] TRA Docket No. 01-00362, *In re: Docket To Determine the Compliance of BellSouth Telecommunications, Inc.'s Operations Support Systems With State and Federal Regulations*, Order Resolving Phase I Issues of Regionality, issued June 21, 2002 ("TRA Order") at 43 (attached hereto as Attachment 33).

[75] TRA Order at 35-41. The TRA's Order noted that BellSouth itself had recommended flow-through data on LNP orders "as the best test of its performance." *Id.* at 41 n.98.

127. Furthermore, even if the TRA's comparison of LNP flow-through rates involved "averaging averages" (*i.e.*, averaging the LNP flow-through rates for each State over the months of March through December 2001), BellSouth offers no data showing the extent (if any) to which the TRA's approach was incorrect or misleading. *See* Stacy Aff., ¶¶ 57-58 (offering only a hypothetical example). The actual LNP flow-through data for any given month offers sufficient evidence that the distortion BellSouth suggests does not exist in the reported LNP Percent Flow-Through Rates or in the TRA's analysis. The table below, which summarizes Percent Flow-Through Rates for LNP in November 2001 (one of the months of data reviewed by the TRA), shows that even States with similar volumes of orders have differing flow-through rates. For example, the Percent Flow-Through Rate for LNP orders during November was 90.4 percent in Kentucky, but only 80.4 percent in North Carolina, despite the similarity in order volumes between the two States. Even taking differences in volumes into account, the disparities in flow-through rates between States are considerable.

State	Volume	Percent Flow Through Rate -- LNP
Alabama	861	87.2%
Florida	10,573	90.4%
Georgia	5,673	96.2%
Kentucky	1,236	90.4%
Louisiana	465	80.5%
Mississippi	28	33.3%
North Carolina	1,060	80.8%
South Carolina	633	89.0%
Tennessee	499	85.2%
Region	21,034	91.2%

128. BellSouth's criticism of the TRA for "averaging averages" is also beside the point. Even when examined on a month-by-month basis, the flow-through rates for LNP orders *persistently* differed among States in BellSouth's region during the 10-month period

examined by the TRA. For example, as shown in Attachment 34 hereto, for each of those ten months, the LNP flow-through rates for Kentucky, Georgia, and Florida exceeded those in Tennessee, Alabama, Mississippi, Louisiana, and South Carolina. Moreover, as shown in Attachment 22, the substantial variation in LNP flow-through rates between States has persisted in 2002. It is virtually inconceivable that such substantial differences would persist if, as BellSouth contends, the OSS are truly regional.

129. Contrary to BellSouth's assertion, the disparity in LNP flow-through rates among States cannot be attributed to the fact that there are "at least seven variables" in the requisition type ("RT") and activity type ("AT") of LNP LSRs submitted to BellSouth. *See* Stacy Decl., ¶ 60. As the TRA found, LNP orders are probably the most homogeneous order type of any submitted by the CLECs. LNP orders "vary" in only one major respect: whether they are "stand-alone" LNP orders (where the CLEC provides its own loop) or are part of an order requesting a BellSouth-provided loop. LNP flow-through rates are determined solely according to whether the interface performed as designed when presented with a valid, error-free order for an RT or AT for which it has been programmed. RT or AT combinations that the interface is not designed to handle are excluded from the flow-through measurement. If a given RT or AT for which the interface has been designed fails more often than other RT or AT combinations, that failure is caused by an error in BellSouth's systems, not by some variation in "the CLECs' business model or market entry methods." *See id.*

130. The variation in LNP flow-through rates cannot be attributed to the fact that some LNP orders are not designed to flow-through, or because CLECs committed errors on the LSR. As previously discussed, orders with "CLEC errors" are excluded from the calculation of both of BellSouth's reported flow-through rates. Moreover, the Percent Flow-Through Rate

(on which BellSouth relies) excludes orders that BellSouth has not designed to flow through. Thus, the substantial differences in flow-through rates for LNP orders from State to State (for example, the Percent Flow-Through Rates of 81 percent in North Carolina, but 97 percent in Kentucky, in April 2002) can only be due to differences in the OSS from State to State.[76]

131. Indeed, the substantial variations in flow-through rates among the BellSouth States is not confined to LNP orders. As shown in the tables attached hereto as Attachments 22 an 35,[77] variations of similar magnitude have persistently occurred for every category of flow-through rates – including flow-through rates for all orders, for business resale orders, for residential resale orders, and the UNE orders – regardless of whether the flow-through rate used is the Achieved Flow-Through Rate or the Percent Flow-Through Rate. For example:

- There is a significant variance in Percent Flow-Through Rates among the States. In April 2002, the difference in such rates between the State with the highest rate and the State with the lowest rate was 16 percentage points for residential resale orders, business resale orders, UNE orders, *and* LNP orders.

[76] The State-specific LNP flow-through data also illustrates the flaw in the use of regional data as a surrogate for State-specific data. When regional data is used, good flow-through performance in States with high order volumes masks poor performance elsewhere. For example, on the regional level BellSouth met the LNP benchmark (85 percent) for LNP Percent Flow-Through Rates for each of the six months from November 2001 through April 2002. However, on a State level the benchmark was only met for only 30 out of 50 total Percent Flow-Through Rates. (The flow-through rates for Mississippi were excluded from four months of this analysis because the monthly volumes of LNP orders prior to March 2002 were less than 100.) In each of the six months, performance was below the benchmark in at least two, and in as many as five, of the States. North Carolina's performance never met the benchmark, Tennessee met it only once, and Louisiana only twice.

[77] The State-specific flow-through data that BellSouth has made available for the months of January through April 2002 include an additional category (in effect, a "tenth State") that it classified as "Unknown." In January 2002 LSR volumes for this category were 0.3 percent of the total volume, but in April increased to 2.0 percent of the total volume and represented 50 percent of the total order volumes in Kentucky.

- The variation in Achieved Flow-Through Rates is even more pronounced. In April 2002, the disparity between the State with the highest Achieved Flow-Through Rate, and the State with the lowest such rate, was:

  - 18 percentage points for residential resale orders;
  - 15 percentage points for business resale orders;
  - 21 percentage points for UNE orders; and
  - 74 percentage points for LNP orders.[78]

- Percent Flow-Through Rates for residential resale orders have been between 12 and 14 percentage points higher in Alabama, Kentucky, and Mississippi than those in Florida – but Alabama, Mississippi, and South Carolina have the lowest Percent Flow-Through Rates for business resale orders.

- In February and March 2002, a disparity of 13 or 14 percentage points existed between the State with the highest Percent Flow-Through Rate for business resale orders, and the State with the lowest such rates.

- In April 2002, a difference of 16 percentage points existed between the State with the highest Percent Flow-Through Rate for UNEs (91 percent) and the State with the lowest such rate (75 percent).

- Achieved Flow-Through rates for residential resale orders have persistently been high in Alabama, Kentucky, Louisiana, Mississippi, and Tennessee, but low in Florida.

132. The linear trend table attached hereto as Attachment 36 shows that the trends in Percent Flow-Through rates have also varied dramatically among the nine States in the BellSouth region. In the nine States, only 19 of the 36 applicable flow-through rates have shown improvement between November 2001 and April 2002, while 17 rates either have not changed or have declined. In the five States that are the subject of BellSouth's application, only 12 of the 20

[78] Alabama's LNP Achieved Flow-Through Rate did not exceed 5 percent for each month from November 2001 through April 2002, but its reported Percent Flow-Through Rate met the 85 percent benchmark three times and ranged from 68 percent to 88 percent.

applicable rates showed improvement during this five-month period, while the remaining eight rates either remained constant or declined.[79]

133. Despite the TRA's conclusion, and the evidence that its performance varies from State to State, BellSouth attempts to support its claim of "regionality" by citing the "attestation" of Price Waterhouse Coopers ("PWC") – which BellSouth erroneously characterizes as an "audit."[80] Contrary to BellSouth's claim, however, the PWC review provides little useful or reliable information on the regionality issue.

134. First, the reliability of the PWC report is inherently suspect. PWC's review was commissioned by BellSouth. No State regulatory agency supervised, or was otherwise involved in, PWC's review. Moreover, as Director Greer of the TRA recently noted, BellSouth effectively limited the scope of PWC's review by indicating to PWC the BellSouth employees who could – and could not – be interviewed, by "placing balloons over the chairs of the BellSouth employees who were not to participate," without objection by PWC. TRA Tr. at 52; TRA Order at 42. PWC's impartiality is also suspect, in view of the fact PWC was

[79] *See* Attachment 36 hereto. The linear trends discussed in Attachment 36 review four categories of Percent Flow-Through Rates: residential resale, business resale, UNEs, and LNP. Thus, for the five States that are the subject of BellSouth's application, there are a combined total of 20 rates (or flow-through trends).

[80] BellSouth repeatedly refers to PWC's attestation as an "audit." Application at 2, 4, 61, 64-65. As the TRA found in its recent order, however, Robert Lattimore of PWC – whose testimony BellSouth cites in support of its "regionality" claim – "testified that BellSouth did not hire PWC to perform an audit assessing the regionality of BellSouth's OSS." TRA Order at 42; Application at 64 n.36; Stacy Aff., ¶¶ 70, 74, 78. Although Mr. Lattimore submitted written testimony in a number of States in BellSouth's region in support of BellSouth's "regionality" claim along with the PWC attestation, the TRA was the only State commission before which he appeared live for cross-examination – and the TRA found the PWC attestation to be unreliable.

represented by BellSouth's own legal counsel during the TRA's recent Section 271 proceedings. *Id.* at 52-53. A majority of the TRA concluded that this and other evidence "was indicative of a relationship between BellSouth and PWC that lacked independence and objectivity."[81]

135. Second, the May 3, 2001 "attestation" of PWC consists of a single page in which PWC states its opinion that certain assertions by BellSouth's management "are fairly stated, in all material respects, as of May 3, 2001, based on the criteria set forth in the Report of Management Assertions and Assertion Criteria on BellSouth Telecommunication's Operational Support Systems." *See* Stacy Aff., Exh. WNS-10, Att. A at 1. PWC attested to BellSouth's assertion that: (1) BellSouth "utilizes the same Pre-Order and Order operational support systems (OSS) throughout BST's nine-state region to support wholesale competing local exchange carrier (CLEC) activity, based on criteria established" by BellSouth management; and (2) BellSouth's DOE and SONG systems "have no material differences in the functionality of performance for service order entry by the Local Carrier Service Center." *Id.*

136. For purposes of determining the "sameness" of BellSouth's pre-ordering and ordering systems, however, PWC applied a definition of "sameness" *established by BellSouth.*[82] BellSouth management established the following two criteria to determine the

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[81] TRA Order at 41. For example, a representative of PWC – which was paid approximately $800,000 for its two-page attestation – acknowledged that BellSouth was his largest client and that he had spent approximately 60 percent of his time on BellSouth-related work during the last several years. TRA Order at 42.

[82] The definition of "sameness" applied by PWC was set forth in the BellSouth Report of Management Assertions to which PWC was attesting. *See* Stacy Aff., Exh. WNS-10 at 2-3 & Att. A at 2.

"sameness" of its pre-ordering and ordering OSS -- one addressing automated processes and the other addressing manual processes.

- The applications and interfaces implemented and available are identical across the nine-state region. "Identical" is defined as one unique set of software coding and configuration ("version") installed on either one or multiple computer servers ("instances") that support all nine-states in an equitable manner.
- The process, personnel and work center facilities are consistently available and employed across the nine-state region and there are no significant aspects to the process, personnel or work center facilities that would provide one state a greater service level or benefit than the other states in the nine-state region.

137. With respect to the "sameness" of its automated pre-ordering and ordering systems, BellSouth's criteria were incomplete because they did not address actual performance and included no examination of State-specific data. PWC, therefore, did not compare pre-ordering and ordering performance data from each State to determine whether BellSouth's OSS actually "support all nine-states in an equitable manner."[83] Rather, PWC simply conducted a mechanical review of whether certain OSS hardware and software are physically similar.

138. In addition, PWC's review of BellSouth's automated systems was incomplete. PWC, for example, did not examine all of the OSS involved in performing pre-ordering functions. For example, BellSouth defined "sameness," for OSS purposes, to include "one unique set of software coding." PWC, however, did not analyze OSS coding. TRA Tr. at 51 (remarks of Director Greer). Furthermore, PWC did not review BellSouth's legacy systems

[83] The majority of the TRA cited PWC's failure to determine BellSouth's actual performance was similar from State to State as one of its bases for finding that the OSS are not regional. *See* TRA Tr. at 35 (remarks of Director Malone), 51 (remarks of Director Greer).

used for pre-ordering functions because it regarded those applications as "out-of-scope." *See* Stacy Aff., Exh. WNS-10, Att. A at 12.

139. The PWC review of BellSouth's manual order processing was similarly inadequate. PWC attested to the assertion that BellSouth "DOE and SONGS systems have no material differences in functionality or performance for service order entry by the Local Carrier Service Centers (LCSC)," based on certain criteria. *Id.*, Exh. WNS-11, Att. A at 2. These criteria are meaningless. In essence, BellSouth asserts that information taken from a uniform CLEC LSR can be inputted into both DOE and SONGS, and the output of both DOE and SONGS goes to SOCS. The same assertion, however, could be made for any of the ordering interfaces (TAG, EDI and LENS) that BellSouth makes available to CLECs. That does not mean that TAG, LENS, and EDI are not materially different from each other or from DOE or SONGS.

140. Third, with respect to PWC's manual processes, PWC's attestation is inconsistent with the BellSouth practices that it discovered during its review. PWC, applying BellSouth's definition of "sameness," found that BellSouth's work center facilities do not "provide one state a greater service level or benefit than the other states in the nine-state region." *Id.*, Exh. WNS-10, Att. A at 1-2. However, during its review PWC discovered that BellSouth's service representatives in its LCSCs were providing preferential treatment to CLEC orders for consumers in Georgia and Florida (where manually-processed orders account for approximately 30 percent of total CLEC orders) as compared to CLEC orders for consumers in other states, such as North Carolina. It appears to be no coincidence that BellSouth was giving such

preferential treatment at the same time that third-party testing of its OSS was being conducted in both Georgia and Florida.[84]

141. The deficiencies in PWC's May 3, 2001 attestation were not cured by the accuracy and timeliness review that it subsequently conducted of DOE and SONGS. That evaluation encompassed only the performance of BellSouth's manual order processing. Like its earlier attestation review, PWC's evaluation included no review of the actual performance of BellSouth's electronic OSS. As a result, even if PWC had found that the performance of DOE and SONGS was the same, the two PWC reviews provide no basis for concluding that the OSS are the same in throughout its region, or even in the five States that are the subject of its latest application.[85]

142. Aside from relying on the PWC attestation, BellSouth asserts that its OSS are regionwide because (1) a CLEC in any of its States uses the same interfaces for access to the same BellSouth OSS as a CLEC in any other State in BellSouth's region; and (2) the servers that BellSouth uses for processing CLEC requests via these interfaces use the same programming codes. Stacy Aff., ¶¶ 41, 43, 46. However, the fact that "there is only one TAG interface" or "only one EDI interface" does not mean that the OSS are regionwide. Interfaces are only the

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[84] PWC has stated that it attested to the regionality of the BellSouth OSS despite its discovery of this preferential treatment because BellSouth ended the practice two weeks before the date of its attestation. This simply illustrates the fact that PWC's attestation was a "snapshot" of BellSouth's OSS as of May 3, 2001 – and, thus, PWC could not have made its attestation if it had been issued two weeks earlier.

[85] PWC's accuracy and timeliness evaluation, in fact, found that the performance of service representatives using DOE and SONGS was *not* the same in all respects. PWC found that the average input time for DOJ was approximately 3 minutes (or 60 percent) longer than the average input time for SONGS.

front-end of the OSS, which also consist of middleware or linkage systems (such as LEO and LESOG) as well as the various back-end (legacy) systems with which these interfaces and middleware must interact to format, create, and obtain validation of a service order. Although the interfaces and middleware may be regional in nature, the back-end systems can, and do, differ from State to State.[86] BellSouth provides different mainframe computers and servers to serve each State, even though the equipment may be physically located in the same data center.

143. Similarly, servers can provide different service in different States even if they are equipped with identical software. The software contains programming for each of the nine BellSouth States, with different instructions and data for each State. For example, as shown in Attachment 37, BellSouth's SOCS contains not only a common program module for all States, but also separate modules for each State. Each State uses a different SOCS server. As a result, these systems result in different performance even if they use common programming and are "designed to operate in an indistinguishable manner." Stacy Aff., ¶ 43. The interaction between the regional middleware systems and these State-specific systems results in the variances in performance from State to State.

144. Experience has shown that BellSouth's OSS are not regional. BellSouth, for example, acknowledges that it has implemented its "Single C" (change) feature in March in Georgia, Louisiana, Florida, and Mississippi – but will not implement that feature in the other five States in its region until late July and early August. BellSouth further admits that during the

[86] These back end systems include, but are not limited to, SOCS, ATLAS, RSAG, P/SIMS, DSAP, and CRIS, which play a key role in pre-ordering, ordering, and billing. *See, e.g.,* Stacy Aff., ¶¶ 68-69, 214, 218, 222, 225, 235.

transition, "there will be differences between the states." *See* Application at 93; Stacy Aff., ¶¶ 259-260. Although BellSouth asserts that implementation of this feature on a rolling basis "does not prove that these systems are not the same," the State-by-State approach contradicts BellSouth's position that its software is identical on a regionwide basis. Stacy Aff., ¶ 261.

145. Similarly, BellSouth's Change Request 0756 reflects the lack of regionality in the BellSouth OSS. Although purportedly designed to implement "UNE-P call scope changes" on a regionwide basis, BellSouth's change request calls for differing solutions in each State, including the implementation of State-specific USOCs. *See* ¶¶ 72-75, *supra*; Stacy Aff., ¶¶ 270-271.

146. Finally, BellSouth's position concerning regionality is not only erroneous, but internally inconsistent. Quite simply, BellSouth is attempting to have it both ways. BellSouth asserts that its OSS are the same in each State in its region, thereby enabling it to use evidence from one or more States in its region for purposes of an application for another State. However, if BellSouth's assertion that its OSS are "the same" across its region is correct, any evidence regarding the performance or testing of its OSS in *any* State in the BellSouth region should be relevant to its application. That evidence would include the results of KPMG's third-party testing in Florida, which show that BellSouth's OSS still fall short of providing CLECs with a meaningful opportunity to compete.

CONCLUSION

147. BellSouth attempts to portray the issue of its OSS compliance as all but settled as a result of the *Georgia/Louisiana Order*. Clearly, it is not. The Commission's order was based on BellSouth's compliance with the commitments it made concerning such competitively critical areas as change management and flow-through. BellSouth has failed to

keep its promises. In addition, current performance data and the KPMG Draft Final Report on the third-party OSS testing in Florida demonstrate that BellSouth denies parity of access to its OSS in numerous respects. For these reasons, BellSouth has not shown that it meets its OSS obligations in any of the five States that are the subject of its latest application.

I hereby declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge and belief.

Executed on July 11, 2002

Jay M. Bradbury

Jay M. Bradbury

I hereby declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge and belief.

Executed on July 11, 2002

Sharon E Norris

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